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

C/41617/2017

(Arising out of Order-in-Original No. 42601/2015 dated 29.10.2015 passed by the Commissioner of Customs, Chennai – II)

M/s. Hi – Tec Corporation Appellant

Vs.

Commissioner of Customs, Chennai – II Respondent

Appearance

Ms. Swarupa, Advocate for the Appellant
Shri B. Balamurugan, 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: **31.08.2017**

Final Order No. 41936/2017

Per Bench

Brief facts of the case are that the appellants were engaged in the business of trading paper products such as printed thermal rolls, paper articles, paper sheets, lottery tickets which are finally supplied to banks, shopping malls, eateries, State Road Transport Corporation etc. During the period 19.04.2010 to 24.06.2010, the Appellant imported printed thermal paper rolls vide 18 Bills of Entry classifying the same under CTH 4911 9990 and claimed exemption under Sl. No. 5 of the Notification No. 26/2000-Cus dated 01.03.2000 on import from Sri Lanka under the Free Trade Agreement between Sri Lanka and India. Out of 18 Bills of Entry, 3 Bills of Entry were provisional due to investigation by Directorate of Revenue Intelligence, Chennai. The DRI investigation took place between 2010 and 2012. On conclusion of the investigation, a show cause notice dated 17.04.2015 was issued to the Mumbai operations in Mumbai by September 2014. The show cause notice proposed re-classification of the imported goods under CTH 4811 9099 on the ground that printing on the impugned goods are merely incidental to the primary use of the goods, denied the benefit claimed under Notification on the ground that the process undertaken by Sri Lankan supplier does not confer the status of originating products. Confiscation and penalty was also proposed. During 11.08.2015, the Appellant wrote to DRI regarding the status of the investigation. Further, the change of address was indicated to DRI vide letter dated 09.10.2015. The personal hearing notices were also undelivered to the Appellant. The show cause notice was received by the Appellant in person from DRI on 21.10.2015. However, within a week the Order in Original dated 29.10.2015 was passed ex parte. Ld. Commissioner confirmed the classification under CTH 4811 9099 on the ground that printing is incidental to the primary use of the paper and denied the exemption under Notification as the process undertaken by the Sri Lankan supplier is not sufficient to confer the status of originating products. Further, imposed redemption fine of Rs.10,00,000/- and penalty of Rs.70,99,546/-. Hence this appeal.

2. Ld. Counsel Ms. Swarupa submitted that the impugned order has been passed without granting an opportunity of hearing and therefore the appellant has not been able to defend the case. She requested that the matter may be remanded to the adjudicating authority with a direction to grant an opportunity to the appellant for submitting evidence as well as personal hearing.

3. Ld. AR Shri B. Balamurugan reiterated the findings in the impugned order.

4. Heard both sides.

5. It is indeed correct that the impugned order has been passed without hearing the appellant. The appellant was served with a show cause notice only on 21.10.2015 whereas within a week i.e. on 29.10.2015, the adjudicating authority has passed the order exparte. Thus, it is necessary to remand the matter to allow the appellant to contest and defend their case. We therefore remand the matter to the adjudicating

authority with a direction to give sufficient opportunity to the appellant to file documents and also for personal hearing. All the issues are left open. The impugned order is set aside and the appeal is allowed by way of remand.

(Operative portion of the order was pronounced in open court)

Sulekha Beevi

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S.)
Member (Judicial)

Rex

Customs, Excise & Service Tax Appellate Tribunal
सत्यमेव जयते

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