IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Customs Appeal No.41329 of 2014

(Arising out of Order-in-Appeal C. Cus.No.417/2014 dated 10.3.2014 passed by the Commissioner of Customs (Appeals), Chennai)

Commissioner of Customs **Appellant**
Export Commissionerate
Custom House
No. 60, Rajaji Salai
Chennai – 600001.

Vs.

M/s. Suguna Poultry Farm Ltd. **Respondent**
No. 1057, Avinashi Road
Jaya Enclave, Coimbatore – 641 018.

APPEARANCE:

Shri M. Selvakumar, AC (AR) for the Appellant
Shri Ganesh Aravind, Advocate for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Vasa Seshagiri Rao, Member (Technical)

Final Order No.40041/2024

Date of Hearing : 10.01.2024
Date of Decision: 10.01.2024

Per Ms. Sulekha Beevi C. S.,

The above appeal is filed by the department against the order passed by the Commissioner of Customs (Appeals) who rejected the appeal filed by the department against the sanction of refund by the original authority.

2. The learned AR Shri M. Selvakumar appeared and argued for the department. It is submitted that the respondent had filed the refund

claim under section 26A of the Customs Act, 1962 for refund of the import duties paid by them in consequence of the goods having been re-exported. It is submitted that the respondent would be eligible for drawback only and the Commissioner (Appeals) has directed for adjustment in drawback and rejected the appeal filed by the department. It is submitted that the refund claim filed under sec. 26A itself is erroneous and therefore the original authority ought not to have sanctioned refund. It is prayed that the appeal may be allowed.

3. The learned counsel Shri Ganesh Aravind appeared and argued for the respondent. At the foremost, it is submitted that the appeal filed by the department is hit by litigation policy as there is no legal question involved and that the issue is also not recurring in nature. The amount involved being less than Rs.50 lakhs, as per the litigation policy in regard to Customs cases would apply and the appeal filed by the department has to be dismissed in limine.

4. It is submitted by the learned counsel that the facts are that the respondents had imported goods and thereafter had intended to re-export them. They had paid the entire anti-dumping duty as well as Basic Customs Duty before export of the goods. Thereupon, the respondent preferred refund claim under section 26A for refund of the import duty as the goods are being re-exported. The said application for refund was sanctioned by the original authority after making due verification of the amount paid as well as on inquiry that the goods have not been cleared by the respondent for home consumption. The department had filed appeal before Commissioner (Appeals) challenging the sanction of refund contending that the refund claim

having been filed under section 26A ought to be rejected as not maintainable although the respondent would be eligible for drawback as per section 74 of the Customs Act, 1962. Taking into account that the department’s contention is limited to the claim of refund filed under section 26A and not the eligibility of drawback, the Commissioner (Appeals) rejected the department’s appeal with a direction to the respondent to prefer a drawback claim. The respondent thereafter submitted a representation for drawback claim and also deducted 2% of the refund amount paid for the reason that in case of drawback, the respondent would be eligible only for 98% of the refund / drawback. There is no error in the order passed by the Commissioner (Appeals) and the impugned order does not require any interference. The learned counsel prayed that the appeal filed by the department may be dismissed.

5. Heard both sides.

6. On perusal of records and also considering the submissions made by both sides, we note that the main grievance put forward in the grounds of appeal filed by the department is that the respondent is not eligible for refund filed under section 26A of the Customs Act, 1962. It is to be noted that the department does not deny the claim of the respondent for eligibility of drawback. This aspect has been taken note of by the Commissioner (Appeals) who has directed the respondent to make a representation for claim of drawback. Further, the original authority has made inquiry and on verification found that the respondent is eligible for refund. For these reasons, we find no merit in the appeal filed by the department.

7. Further, the amount involved is less than Rs.50 lakhs and there is no legal issue or the issue is not recurring in nature. The department's appeal falls within the litigation policy also and is to be dismissed.

8. In the result, the impugned order is sustained. The appeal filed by the department is dismissed.

(Dictated and pronounced in open court)

(**VASA SESHAGIRI RAO**)
Member (Technical)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

Rex