CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Customs Appeal No. 50154 of 2020 [SM]

[Arising out of Order-in-Appeal No.393 (CRM)CUS/JPR/2019 dated 01.11.2019 passed by the Commissioner (Appeals), CGST & Customs, Jaipur]

M/s.Manglam Arts **...Appellant**
Govind Nagar,
Amber Palace Road,
Jaipur - 302002

VERSUS

Commissioner,
Central Goods & Service Tax, Jaipur **...Respondent**

APPEARANCE:

Mr. Suhrid Bhatnagar, Advocate for the Appellant
Mr.Nagendra Yadav, Authorized Representative for the Respondent

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING/DECISION:**08/09/2021**

FINAL ORDER No. 51827/2021

RACHNA GUPTA

Present appeal has been filed to assail the order of Commissioner (Appeals) bearing No.393/2019 dated 25 October, 2019. It is an order in second round of litigation with respect to the Show Cause Notice No.921 dated 31.12.2015 which was issued to the appellant while scrutinizing the documents submitted by the appellant at the time of re-import of the furniture and textile items which were exported earlier for the exhibition purpose. However, alongwith the said re-import the glass items mentioned in the invoice No.37520 dated 09.08.2014 and 37580 dated 19.08.2014 which were exported vide shipping bill No.4499493 and 4509809 both dated 20.08.2014 were also re-imported being the defective and rejected goods by the exporter. Department after observing that the description of the re-imported defective goods as mentioned in the said invoices do not match with the description in the invoice No.FACTU 20150005 dated 30 January, 2015 as issued by Spiridon, Belgium that served the impugned Show Cause Notice upon the appellant proposing the rejection of refund claim of Rs.1,76,905/- filed on 22.05.2015/14.10.2015 under Section 128 A (3) of Customs Act, 1962. The said proposal was initially confirmed by the Original Adjudicating Authority, vide initial order bearing No.38/2017 dated 10.03.2017. The appeal thereof was allowed by way of remand vide order No.205/2018 dated 20.07.2018 directing the Original Authority to re-adjudicate after re-examining the matter.

1.1 Pursuant to said direction, the Order-in-Original No.64/2018 dated 30.03.2019 was passed rejecting the refund claim on the same ground that even re-examination report did not reveal anything about the description of goods vis-à-vis Invoice No. No.FACTU 20150005 dated 30 January, 2015. The said order has been upheld by the Order under challenge.

2. I have heard Shri Suhrid Bhatnagar, learned Counsel for the appellant and Shri Nagendra Yadav, learned Authorized Representative for the Revenue.

3. It is submitted on behalf of the appellant that there is no difference as far as the goods which were exported and re-imported are concerned, the later being defective goods. A verification report as was called by the Department themselves corroborating the same has been impressed upon by the ld. Counsel. It is submitted that confusion has arisen because the appellant had filed a common Bill of Entry for re-importing the articles which were exported to be displayed in an exhibition alongwith the goods which were re-imported being the rejected goods by the exporter. It is impressed upon that there otherwise is no mismatch, as is alleged. The authorities below have mentioned to have failed to consider the said verification report in true spirit. Order accordingly is prayed to be set aside. Appeal is prayed to be allowed.

4. Per-contra, learned D.R. has submitted that irrespective of the verification report, it was for the appellant to produce the evidence falsifying the alleged mismatch vis-à-vis the description of the goods re-imported to that of the goods in Invoice No. No.FACTU 20150005 dated 30 January, 2015. Since the verification is also silent about the said Invoice that Commissioner

(Appeals) has committed no error. Appeal is accordingly, prayed to be dismissed.

5. After hearing the rival contentions and perusing the record, I observe and hold as follows:-

There is no denial as far as the above discussed facts are concerned. The only allegation in Show-Cause-Notice dated 31.12.2015 is that the perusal of Invoice No. No.FACTU 20150005 issued by M/s. Spiridon, Belgium and submitted earlier alongwith the check list of Bill of Entry and same Invoice submitted alongwith the letter dated 27.04.2015 seeking amendment in the Bill of Entry reveal that the description of goods mentioned in both the copies of the same Invoice do not match with each other. Initially the Original Adjudicating Authority had failed to consider the verification report dated 29.04.2015 and ignored the re-examination of goods due to which the Commissioner (Appeals) vide Order of 20.07.2018 had remanded back the matter. Post re-consideration also the proposal in Show Cause Notice has been confirmed and the refund claim of Rs.1,76,905/- has been rejected on the ground of alleged mismatch of the goods. Commissioner (Appeals) also vide the Order-under-challenge has rejected the appeal holding that appellant has not explained the reason and has not convinced the Department for mismatch of description of goods in the Invoice submitted by the appellant with the check-list of Bill of Entry.

6. In the given circumstances, I perused the observation of the reports as are recorded in the Order-in-Original para 9 thereof. The same reads as follows:-

> *"Please peruse previous note sheet, request submitted by the importer and as directed the goods has been re-examined in view of the Notification No.94/96 in the presence of authorized representative of the importer Shri Ranvir Singh, G-Card No.12/14 and found as per invoices and packing list which were exported vide shipping bill No.4499493 dated 20.08.2014 and 4509809 dated 20.08.2014 under Invoice No.37520 dated 09.08.2014 and 37580 dated 19.08.2014 and also established with the identity of goods as declared in the invoice and packing list of the said shipping bills".*

7. No doubt the report is silent mentioning about the Invoice No.FACTU 20150005 but apparently and admittedly, the Invoice with which the Invoices No.37520 and 37580 both dated 19.08.2014 were got compared was the Invoice No. No.FACTU 20150005. As far as the issue of alleged mismatch in description of goods was concerned, it cannot be denied by the Department nor actually has been denied that it is the invoice of January, 2015 only which was got compared with both said Invoices of 2014. In view thereof the initial findings that the re-examination report did not reveal anything about the description of goods vis-à-vis Invoice No.FACTU 20150005 are apparently wrong on the face of its record. The said findings of Original Authority have been confirmed in verbatim by Commissioner (Appeals) vide the Order-under-challenge. Accordingly, it would be appropriate to hold that the Adjudicating Authority below has ignored the

verification report prepared by the Department itself which to my opinion is sufficient reason to falsify the allegations in the Show Cause Notice about mismatch. The report in clear words establishes that the identity of goods as declared in the Invoice and Check list of the Shipping Bills filed at the time of re-import of the goods is same as were mentioned in the Invoice No.FACTU 20150005.

8. In view of said findings, the order under challenge is hereby set aside. Since the refund claim has been rejected only on ground of alleged mismatch which Departments own reports falsifies, the appellant is held entitled for the impugned refund. Order under challenge is therefore, set aside. Appeal accordingly, stands allowed with consequential benefits.

[Dictated and pronounced in the open Court]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita