CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH - COURT NO. II
Customs ROA Application No. 50120 of 2023
in
Customs Appeal No. 50962 of 2021(SM)

(Arising out of Order-in-Appeal No. 68 (SM) CUS/JPR/2021 dated 10.05.2021 passed by the Commissioner of Customs (Appeals), Jaipur.)

M/s Dynamic Cables Ltd **Appellant**
F-259-260, Road, No. 13,
VKI Area, Jaipur-302013.

Vs.

Commissioner of Customs, Jaipur I **Respondent**
N.C.R. Building, Statue Circle,
C-Scheme, Jaipur-302005

APPEARANCE:
Mr. R.G. Choudhary, Consultant for the Appellant
Mr. Gopi Raman, Authorised Representative for the Respondent

CORAM:
HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 50479/2023

Date of Hearing: 17.03.2023
Date of Decision: 17.03.2023

ANIL CHOUDHARY:

Heard the parties on miscellaneous application for restoration.

2. Learned Counsel for the appellant explains that there was no case of deliberate default, as they were not aware with the change of system of sending notice by this Tribunal. Earlier this Tribunal was sending notice for every adjourned date, which system changed after the daily orders were being uploaded on the website of the Tribunal. In the circumstances, the appeal is restored in the interest of justice.

3. With the consent of the parties, the appeal itself is taken up for hearing. Heard the parties on merits.

4. The appellant is a manufacturer of electrical cable and conductors, and exports most of their production. The appellant imported goods (raw materials) under various 'Advanced Authorisation License' issued by the DGFT, without payment of IGST/SAD under Notification No. 18/2015-Cus dated 01.04.2015 (as amended). The said exemption stood withdrawn by the Government w.e.f. 01.07.2017 on implementation of GST regime. The said exemption was again restored vide Notification No. 79/2017-Cus dated 13.10.2017. As the exemption was restored, the appellant availed the exemption from payment of IGST for imports made subsequent to 13.10.2017 till January 2018. In the meantime, the appellant came to know that it appeared to revenue, that the exemption of IGST is available under the new Notification only where goods are imported under pre import condition, and assessee/ importers similarly situated are being booked by the DRI for non payment of IGST. The appellant under such circumstances approached the revenue for re-assessment of the Bills of entry filed after 13/10/2017 and thus the revenue accordingly re-assessed and thus the appellant deposited an amount of Rs. 69,62,790/- towards IGST and a further amount of Rs. 7,46,924 /- as interest. The appellant on being so advised that interest was not chargeable under the facts and circumstances, filed refund claim of the interest amount of Rs. 7,46,924/- on 10.10.2019, claiming the aforesaid amount as wrongly deposited, at the instance from the department.

5. The said claim was adjudicated vide OIO dated 15.02.2020 and it was rejected on the ground that the exemption was not available to the appellant. Being aggrieved, the appellant preferred appeal before the learned Commissioner (Appeals) who vide impugned order-in-appeal rejected the appeal observing that though the condition in Notification No. 79/2017-Cus, under Sr. No. 2 with respect to exemption Notification No. 18/2015-Cus, exemption was restored but was made subject to "pre-import condition". This pre-import condition was again modified by subsequent Notification No. 1/2019-Cus dated 10.01.2019, vide notification Under Section 25(1) of the Customs Act, whereby Clause (xii) in condition (c) to Notification No. 18/2015-Cus was deleted (inserted on 13.10.17). As a result, the exemption condition as available prior to 01.07.2017 was restored. Further, learned Commissioner observed that any Notification of clarificatory nature should have been issued under sub-Section (2A) of Section 25. However, Notification No. 1/2019-Cus has been issued under sub-Section (1) of Section 25.

6. Assailing the impugned order, learned Counsel for the appellant states that the learned Commissioner (Appeals) have erred in rejecting the refund claim by observing that the clarificatory Notification No. 1/2019-Cus have been issued under sub-Section (1) and not under sub-Section (2A) and thus it is not having clarificatory effect.

7. I find that the said observation is erroneous and against the spirit of law. Section 25(1) gives the ominous power to the Government in public interest to issue notification by publishing in the official gadget, exempting generally either absolutely or subject

to such condition, as it specifies in the notification, goods of any specified description from the whole or any part of the duty of Customs, in lieu thereof. Thus, there is no error on the part of the Central Government in issuing the clarificatory notification under Section 25 (1). I further hold that the modification of exemption done by clarificatory Notification No. 1/2019 dated 10.01.2019 is clarificatory in nature and shall have effect retrospectively w.e.f. 13.10.2017, when the exemption was reintroduced. Learned Counsel further submits that under the exemption Notification r/w the clarificatory notification, they were not required to deposit the IGST amount, however as they have deposited the amount and taken Cenvat credit, they are not claiming refund of the IGST amount. However, in the facts and circumstances, interest amount deposited is in the nature of deposit, and is fully refundable. Learned Counsel also relies on the ruling of Hon'ble **Supreme Court in WPIL Ltd. Vs. CCE [2005-181-ELT-359]** as also held in **Shri Renuka Sugar Ltd vs. Union of India 2018-360-E.L.T. 483.**

7. Learned AR for revenue relies on the impugned order.

8. In view of the aforementioned observations and findings, the appeal is allowed. The Adjudicating Authority is directed to grant the refund alongwith interest as per rules, within a period of 45 days from the date of receipt of copy of this order. Both appeal and miscellaneous application are allowed.

(order pronounced in the open Court)

Anil Choudhary
Member(Judicial)

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