CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Customs Appeal No. 52501 of 2015

(Arising out of order-in-appeal No. CC(A)CUS/170/2015 dated 23.03.2015 passed by the Commissioner of Customs (Appeals), New Delhi)

DATE OF HEARING : 02.02.2017
DATE OF DECISION : 09.02.2017

CC, New Delhi …. **Appellant**
(Rep by Sh. K. Poddar, DR)

VERSUS

M/s Andslite Pvt. Ltd. …. **Respondent**
(Rep. by NONE)

CORAM : HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. ASHOK K. ARYA, MEMBER (TECHNICAL)

FINAL ORDER NO. 50717/2017

PER JUSTICE (Dr) SATISH CHANDRA:

The present appeal is filed by the Department against the order-in-appeal no. CC(A)CUS/170/2015 dated 23.03.2015 passed by the Commissioner of Customs (Appeals), New Delhi.

2. The brief facts of the case are that, the assessee-Respondent imported LEDs (Light emitting Diodes) classified under CTH 85414020 by claiming concessional rate of CVD under

Notification No. 12/2012-CE dated 17.03.2012 (Sl. No. 271, read with Sl. No. 321) for the manufacture of goods specified i.e. LED Lights or fixture including LED lamps of Chapter 85 or 94 subject to the fulfilment of the Condition No. 3; and also exemption of SAD under Notification No. 21/2012-Customs dated 17.03.2012 (Sl. No. 90) subject to the Condition NO. 5 of the Notification No. 12/2012-Customs dated 17.03.2012.

Since the assessee-Respondents claimed the benefit under the above mentioned Rules, they were asked to provide the certificate/details of registration as required under the said Rules in terms of the Notification No. 21/2012-Customs dated 17.03.2012. Also to claim the benefit of concessional rate of CVD under Notification No. 12/2012-CE dated 17.03.2012, the assessee-Respondents were required to provide the intended use to the satisfaction of the Deputy Commissioner/Asstt. Commissioner of jurisdictional Central Excise Division. The assessee-Respondents failed to provide the certificate/registration details in this respect.

Therefore, the lower authorities vide order-in-original has held that the assessee-Respondents were not eligible to avail the exemption/concession under Notification No. 12/2012-CE dated 17.03.2012 and 21/2012-Customs dated 17.03.2012 for the consignments imported under the 19 bills of entry during the period 21.03.2012 to 17.08.2012 and demanded differential customs duty i.e. CVD and SAD. The penalty was also imposed. But the Commissioner (Appeals) vide impugned order allowed the claim of the assessee-Respondents by setting aside the order-in-original. Being aggrieved, the Department has filed the present appeal.

3. With this background, we have heard Shri K. Poddar, learned DR for the Department. None appeared on behalf of the assessee-Respondents.

4. On perusal of the record, it appears that the only reason given for denying the benefit is that the certificate submitted by assessee-Respondents, indicating the use of the said imported goods in the manufacturing of LED Torch, LED Lamps, LED Solar Lantern, LED Bulbs, LED Study Lamps and LED Solar Home Lights, has been issued by the Superintendent of Customs and Central Excise and not by the jurisdictional Deputy/Assistant Commissioner, as required. But the Department nowhere mentioned that the said imported goods were not intended for the use and that the said goods were not actually used in the manufacture of the goods mentioned in Sl. No. 321 of the Notification No. 12/2012-CE dated 17.03.2012, namely, LED lights or fixtures including LED lamps falling under Chapter 85 or 94. This implies that the fulfilment of the substantive condition of the said Notification has nowhere been otherwise questioned.

5. When, on merits, the claim of the assessee-Respondent is sustainable, then merely on technical ground the same cannot be denied. The issuance of the certificate by the Superintendent is a procedural aspect, but nowhere it is alleged that the certificate was

forged or not based on the imports. When on merits the assessee-Respondents is entitled for the benefit, then certainly, the procedural lapse will not come in the way. Therefore, we find no reason to interfere with the impugned order. Hence, the order passed by the Commissioner (Appeals) is hereby sustained along with the reasons mentioned therein.

6. In the result, the appeal filed by the Department is dismissed.

(Pronounced in the open court on 09.02.2017)

(ASHOK K. ARYA)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

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