CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –III

Customs Appeal No. C/51485/2014-CU [DB]

[Arising out of Order-in-Original No. 18-2013 dated 13.12.2013 passed by the Commissioner of Customs, Jaipur]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon’ble Mr. Ashok K. Arya, Member (Technical)

M/s. Autolite India ...Appellant

Vs.

C.C.- Jaipur-I …Respondent

Appearance:
Mr. Rupesh Kumar, Advocate for the Appellant
Mr. S. K.Sheoran, DR for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon’ble Mr. Ashok K. Arya, Member (Technical)

Date of Hearing.04.11.2016
Date of Decision.03.03.2017

Final Order No. 52088 /2017

Per S.K. Mohanty:

This appeal is directed against the impugned order dated 13.12.2013 passed by the Commissioner of Customs, Jaipur, wherein the request of the appellant for allowing drawback at All Industry Rate was rejected.

2. Brief fact of the case are that the appellant is engaged in the manufacture of Automotive Headlamps, falling under Chapter Heading No. 8512 of the Central Excise Tariff Act, 1985. The appellant is a Star Export House, registered with the Ministry of Commerce and Industry. For the exports made between the period May 2006 and September 2008, the appellant requested the jurisdictional Customs authorities for conversion of free shipping bills into duty drawback shipping bills and for grant of All Industry Rate of Duty Drawback for the shipping bills. The matter was adjudicated vide the impugned order dated 13.12.2013, wherein the said request of the appellant was turn down. The Ld. Commissioner of Customs vide impugned order has held that no provision exist in the Circular No. 4/2004 dated 16.01.2004 to convert a free shipping bill to drawback shipping bill and that the appellant had not filed the declaration in terms of Rule 12(1)(a) of the Customs & Central Excise Duties Drawback Rules, 1995. Thus, the impugned order has concluded that non-filing of drawback declaration was not beyond the control of the appellant and accordingly, is not a fit case for exemption in terms of Rule 12(1)(a) *ibid*.

3. Heard both sides and perused the records.

4. Facility for permitting conversion of free shipping bill into drawback shipping bill is governed under Chapter X of the Customs Act *and* Central Excise Duties Drawback Rule, 1985. Rule 12 of the said rules provides for filling of statements/ declarations by the exporter at the time of export of goods for the purpose of availing drawback. Proviso to the said rule empowers the jurisdictional Commissioner of Customs to grant exemption from observance of the provision of Rule 12(1)(a) *ibid* for the purpose of availment of drawback. In terms of the provisions of the said rule, the CBEC vide Circular No. 4/2004 -Cus.,

dated 16.01.2004 has clarified that the jurisdictional Commissioner may examine and consider individual requests on merits and that the relaxation shall only apply in respect of drawback claims pertaining to All Industry Rates of drawback.

5. A bare reading of Rule 12(1)(a) ibid and the Circular dated 16.01.2004 issued by the CBEC demonstrate that the conversion is permissible, only when the exporter is able to satisfy the Commissioner of Customs that "for reasons beyond his control", the drawback was not claimed. In the present case, documents available in the case file divulge that the appellant had applied to the Licensing Authority, Jaipur on 21.07.2006 for grant of Duty Free Replenishment Certificate (DFRC) under Para 4.2 of the handbook of procedures 2004-09. Pursuant to the said letter of the appellant, the DGFT vide letter dated 21.07.2006 informed that the appellant had been put under the Denied Entity List (DEL) as the export obligation discharge certificates against some of the advance licenses issued to it had not been furnished. Subsequently, the appellant sent several representations to the DGFT, requesting for issuance of the DFRC. Finally, the DEL status of the appellant was revoked vide withdrawal order dated 22.02.2010 passed by the Joint DGFT.

6. The correspondence exchanged between the appellant and the DGFT reveals that the appellant was diligently pursuing its matter for issuance of DFRC. Thus, filing of drawback declaration in respect of the shipping bills was beyond the control of the appellant, since revocation of DEL happened much later. Therefore, in terms of the CBEC Circular dated 16.01.2004, the ld. Commissioner of Customs should have considered the case of the appellant and allowed the exemption from

observing the provisions contained in Rule 12(1)(a) *ibid* for the purpose allowing drawback.

7. Therefore, after setting aside the impugned order, we remit the case back to the ld. Commissioner of Customs to examine and consider the request of the appellant on merits in terms of the Circular dated 16.01.2004. Needless to say that due opportunity of personal hearing shall be granted before deciding the case afresh.

8. The appeal is allowed by way of remand.

(Pronounced in the open court on 03.03.2017)

(Ashok K. Arya)
Member(Technical)

(S. K. Mohanty)
Member (Judicial)

Sakshi