IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV

DATE OF HEARING/DECISION : 16/08/2017.

Customs Appeal No. 52560 of 2015

[Arising out of the Order-in-Appeal No. CC (A)/CUS/D-II/ICD/457/2015 dated 22/04/2015 passed by The Commissioner of Customs (Appeals), New Custom House, New Delhi.]

M/s Vadhra Art Gallery — Appellant

Versus

CC (Imports), New Delhi — Respondent

Appearance

Shri S.K. Pahwa, Advocate – for the appellant.

Shri R.K. Manjhi, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 57813/2017 Dated : 16/08/2017

Per. S.K. Mohanty :-

This appeal is directed against impugned order dated 22/04/2015 passed by the Commissioner, Customs (Appeals), New Delhi.

2. The brief facts of the case that the appellant had imported sculptures from USA for the purpose of display in the exhibition

held in India. While filing the bill of entry for clearance of the imported consignment, the appellant had claimed the duty exemption provided under Notification No. 26/2011 – CUS dated 01/03/2011. However, the benefit of exemption was denied by the customs authorities on the ground that since the goods were imported on loan basis and the importer was not the owner or purchaser of the goods, the condition provided in the said notification has not been fulfilled and accordingly, the benefit contained therein is not available to the appellant.

3. The learned Advocate appearing for the appellant submits that the appellant is not contesting the merits of the case, whether the benefit of notification dated 01/03/2011 is available or not. The prayer in this appeal is confined to the issue of availability of the benefit of drawback, on the ground that the imported goods were duly exported by the appellant. The learned Advocate specifically states that the drawback, benefit was claimed by the appellant in the reply to the show cause notice.

4. On the other hand, the learned DR appearing for Revenue reiterated the findings recorded in the impugned order.

5. Heard both the sides and perused the case records.

6. On perusal of the case records, we find that the appellant vide its reply to show cause notice dated 30/12/2013 has stated that it is entitled for the drawback of 98% of the duty payable on the disputed goods and liability if any, should be restricted to 2%

only. Further, the fact is not under dispute that at the time of import as well as export of the disputed goods, no specific demand was raised and the same was raised after almost 7 months from the date of export of the subject goods. Since, the authorities below have not specifically addressed the issue regarding availability of drawback benefit to the appellant, we are of the view that the matter should go back to the Original Authority for proper adjudication of the matter.

7. Accordingly, after setting aside the impugned order, we remand the matter back to the Original Authority for a proper fact finding regarding entitlement of the drawback benefit of the appellant. Needless to say that opportunity of personal hearing shall be granted to the appellant, before deciding the issue afresh.

8. In the result, the appeal is allowed by way of remand to the Original Authority.

(Order dictated and pronounced in open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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