IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Cus.Appeal No.266/10

(Arising out of Order-in-Appeal No.Kol./Cus/CKP/195/2010 dt.22.06.2010 passed by Commissioner of Customs (Appeals), Kolkata)

M/s Sara International Ltd.

Applicant (s)/Appellant (s)

Vs.

Commr. of Customs (Port), Kolkata

Respondent (s)

Appearance:
Shri Jnanesh Mohanty, Adv. for the Appellant (s)
Shri S. N. Mitra, Asstt. Commr. (A.R.) for the Revenue (s)

CORAM:

HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
HON'BLE SHRI C. L. MAHAR, TECHNICAL MEMBER

Date of Hearing : 26.06.2018
Date of Pronouncement : 29.06.2018

ORDER NO.FO/76383/2018

Per Shri C.L.Mahar :

This is an appeal filed by the Appellant against the impugned Order-in-Appeal No.Kol./Cus/CKP/195/2010 dt.22.06.2010 passed by Commissioner of Customs (Appeals), Kolkata.

2.1 Brief facts of the matter are that the appellants have filed refund claim of Rs.67,05,000/- against the two following Shipping Bills :

Sl.No.	Shipping Bill Nos.	Quantity	Duty payment Particulars and date	Application for refund filed on	Amount of refund claimed
1	2	3	4	5	6
1.	S/B.004473 Dt.03.09.07	22000 MT	E-03 (AP) Dt.03.09.07	27.03.2008	Rs.55,00,000
2.	S/B.004661 Dt.10.09.07	5000 MT	E-24 (AP) Dt.10.09.07	27.03.2008	Rs.12,05,000

The appellants have been engaged in export of iron fines and as per the provisions of Finance Act, 2007 and the Customs Notification No.62/2007 dated 03.05.2007, a Customs duty @ Rs.300/- per M.T. of iron ore fines having Fe contents 62% and above and @ Rs.50/- per M.T. for the consignment having Fe contents less than 62% came to be imposed on export goods. The appellants, at the time of export of the consignment, has declared Fe contents of the iron ore fines covered by the above mentioned two Shipping Bills as 63% and accordingly, the export duty @ Rs.300/- per M.T. was paid and goods under above mentioned two shipping bills were assessed to export duty and allowed to be exported. It has been claimed by the appellant that on their own, they had got the samples drawn from the export consignments of the iron ore fines covered by the above mentioned two Shipping Bills by engaging M/s Mitra S. K.Pvt. Ltd. and they had certified that Fe contents of the iron ore fines in exported consignment at 61.83%.

2.2 On the basis of the above, this test report given by M/s Mitra S. K.Pvt. Ltd., a private surveyor and a refund claim of Rs.67,05,000/- was filed by the appellants with the Customs authorities in Kolkata on 09.11.2007.

2.3 It has been the claim of the appellant that since the rate of Customs Export duty is directly linked with the percentage of Fe contents in the iron ore fines and as per test report got conducted by themselves the Fe content was less than 62% in their case, they were liable to pay export duty only @ Rs.50/- per M.T. instead of @

Rs.300/- per M.T., which they paid at the time of export of the above consignments and therefore, they are entitled for refund of excess amount paid by them to the Revenue authorities.

2.4 The Assistant Commissioner vide its Order dated 18.03.2007, has rejected the appellants' refund claim on the following grounds :

(i) That no samples for determining the Fe content from the export consignment was drawn by the Customs nor any request for drawal of the samples was made by the exporter at the time of shipment ;

(ii) The exporter on the basis of test report got conducted by themselves from their private surveyor, namely, M/s Mitra S. K.Pvt. Ltd., determined that the Fe contents for export consignment is 63% and therefore, they have rightly paid the export duty @ Rs.300/- per M.T. ;

(iii) The adjudicating authority has also observed that in all the relevant export documents, like, Shipping Bills, export invoices, contract of the suppliers with the buyers packing lists, the exporter has declared the Fe content in the iron ore fines as 63%. It has also been mentioned in the Order-in-Original dated 18.03.2010 that the exporter had not disputed or challenged the assessment of the export duty made by the proper officer and the duty was assessed on the basis of declaration made by the appellants themselves ;

(iv) The adjudicating authority has also held that since that the claim for refund is also barred by time as the same has been filed beyond the statutory period of six months as provided under Section 27 of the Customs Act, 1962, same was rejected.

2.5 The appellants have gone in appeal before the ld.Commissioner (Appeals), who has also endorsed the Order-in-Original and has held that firstly, the appellants have drawn samples from the export consignments on their own will without intimation or in presence of the Customs Officers from the export consignments of iron ore fines. It has also been mentioned by the ld.Commissioner (Appeals) that drawal of such samples was improper as it could not be ascertained as to how the samples were drawn and from where and at what stage the same were drawn. It had been held by him the Fe content @ 63% was declared by the appellant himself at the time of export and that too on the basis of test report got conducted by themselves. The second ground, on which the ld.Commissioner (Appeals) has rejected the appellants' appeal had been that the refund claim is barred by time limit as it has been filed beyond the period of six months as prescribed under Section 27 of the Customs Act, 1962.

3. The ld.Advocate appearing on behalf of the appellant has primarily contested that they have paid export duty @ Rs.300/- per M.T. on the export of iron ore fines on the basis of primary test report provided by their private surveyor, M/s Mitra S. K.Pvt. Ltd. as per test report dated 4th September, 2007. However, the final report has come on the later date, wherein the percentage of Fe content was 61.83%. The test report certificate to this effect given by their private surveyor, M/s Mitra S. K.Pvt. Ltd. has been produced before the authorities. It

has also been contended that it is wrong on the part of the adjudicating authority as well the ld.Commissioner (Appeals) to hold that the claim for refund is barred by time as they have filed their refund claim on 09.11.2007 along with all the relevant documents such as, certified copies of shipping bills, copies of mates receipts, Customs duty payment receipts, certificate of analysis for Fe content, load port at Haldia. The ld.Advocate has taken us through the relevant documents, test report etc, in this regard.

4. The ld.D.R. appearing on behalf of the Revenue, has also reiterated the findings of the Order-in-Original as well as the order of the Commissioner (Appeals).

5. We have heard both sides and perused all the relevant records of the appeal. The primary basis of the appellants for claiming the refund is test report, which is given by M/s Mitra S. K.Pvt. Ltd., wherein they have claimed that Fe content in the impugned export of iron ore was 61.83% and as the export duty on iron ore fines having contents of 62% Fe, is leviable to export duty @ Rs.50/- per M.T. and since they have paid export duty @ Rs.300/- per M.T. on the subject export consignment, the additional amount of export duty is refundable to them as per the provisions of Section 27 of the Customs Act, 1962. We find that at the time export, the appellants themselves, have declared Fe content as 63% in their export consignment covered by Shipping Bills mentioned in the preceding paras. This declaration was made on the basis of test report, which was also undertaken by the same surveyor, M/s Mitra S. K.Pvt. Ltd.. The shipping bills were finally

assessed to export duty on the basis of their own declaration and export duty was discharged rightly by them at the time of export at @ Rs.300/- per M.T.

6. It is a matter of record that the exporter has neither requested for drawal of samples in presence of the Customs authorities for undertaking re-test of the export consignment nor they have paid the export duty provisionally. Without suspecting the veracity of the samples, which have been put for re-test, we find it inappropriate to draw the samples from the export consignments and got the same chemically tested without knowledge of the authorities for claiming the refund of the Customs duty, which have already been finally assessed and deposited by the appellants. It is also seen from the various documents submitted along with appeal that all along in all the documents, it has been declared by the appellants that Fe content in the consignment of the iron ore fines, is having Fe of 63%. We are of opinion that allowing a refund claim on the basis of test reports of the samples which have been drawn and put to test without any authority or justification, it will lead to complete anarchy and arbitrariness, we therefore, find that the refund claim filed by the appellants is not admissible as per the provisions of Section 27 of the Customs Act, 1962 and the same has rightly been rejected by the authority. On the point of claim of the adjudicating authority that the refund claim has been found time bar as the same has not been filed within a period of six months from the date of payment of duty as required under Section 27 of the Customs Act, 1962, we hold that the appellants have

filed the refund claim well within the time as refund claim with all the relevant documents, has been received by the Customs authorities on 09.11.2007, which was well within the period of six months as export duty has been paid by them on 03.09.2007 and 10.09.2007 and thus, we find that the refund claim was within time.

7. In view of the above, we hold that the appellants are not entitled for refund under Section 27 of the Customs Act, 1962. Accordingly, the appeal is devoid of any merit and same is dismissed.

(Pronounced in the open Court on 29.06.2018)

Sd/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

Sd/
(C.L.MAHAR)
MEMBER (TECHNICAL)

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