IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal Nos. C/234/10 & C/359/10

(Arising out of Order-in-Original No. KOL/CUS/4/13/10 dated 26/03/2010 passed by the Commissioner of Customs (Port), Kolkata and Order-in Appeal No. KOL/CUS/CKP/242/2010 dated 31/08/2010.

M/s Veejay Impex

Applicant (s)/Appellant (s)

Vs.

Commissioner of Customs (Port), Kolkata

Appearance:
Shri Sanjay Bhowmik, Advocate for the Appellant (s)
Shri S. Guha A. C. (A. R.) for the Revenue (s)

CORAM:
HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI BIJAY KUMAR, MEMBER (TECHNICAL)

Date of Hearing: -09.07.2018

ORDER NO. F/76445-76446/2018

PER CORAM.

These appeals have been directed against the Order-in-Appeal No. KOL/CUS/CKP/242/2010 dated 31/08/2010 passed by the Commissioner of Customs (Appeals), Kolkata and arising out of Order-in-Original No. KOL/CUS/JC/GR-1/01/10 dt. 26/04/2010. The JC's order has been based on the basis of order No. 29/KOL/CUS/PORT/13/10. In the said order Commissioner has rejected the delay of extension of time beyond one year for the re-importation of export consignment of the Appellant.

2. By the Impugned Order, Ld. Adjudicating Authority, that is Commissioner (Port), has not allowed extension of time beyond one

year for re-importation of the goods exported earlier under the Notification No. 94/96-Cus dt. 16-12-96 and therefore, demand of customs duty vide SCN F. N. S-202-Gr.I (P)-201/05A dt. 04.08.05 ; in pursuance of which the Adjudicating Authority has confirmed the demand of duty that is subject of matter of Custom Appeal No. 359/2010.

3. The facts involved in this case are that appellant has exported consignment of Frozen Headless Shellon Black tiger Shrimps under DEPB Scheme to USA vide Shipping Bill No. 5135011 dt. 21.11.03. The said export consignment was rejected by the importer of USA as the same could not pass the test of FDA. Thereafter, the American importer entered in various email exchanges with the appellant regarding re-importation of the goods. Accordingly, the goods were re-imported and for the clearance of which the Appellant filed the Bill of Entry No. IF60 dt. 18.02.2005 claiming the benefit under notification No. 94/96-Cus dt. 16.12.1996. As per the notification, the re-importation is required to be done within a period of one year for the consignment under the date of export which was obviously not done in this case. According, the Appeal is before us against the impugned orders.

4. We have heard the Parties.

5. Ld. Advocate states that the Commissioner has not permitted the extension of time for re-importation of goods as required under the notification. However, the consignment has been permitted to be re-exported to Vietnam.

6. Ld. DR says that there is no evidence for the rejection of export consignment by the FDA. The appellant has not adduced enough proof to that effect. He also impresses on fact that the e-mail has been exchanged between the importer and exporter and also the appellant has approached to the Commissioner only after the Show Cause Notice was issued to them by the Assessing Officer demanding the duty for the delay beyond one year for re-importation of the goods. Accordingly, he reviewed the order passed by the Ld. Adjudicating Authority in this case is required to be upheld in appeal before this Tribunal.

7. There is another appeal on this linked issue as Appeal No. 359/10 which is against the order of the Commissioner (Appeal) which was passed in pursuance of the assessment order by the Ld. Assisstant Commissioner denying the benefit of Notification No. 94/96 as amended.

8. We have heard the both sides and perused the Appeal records regarding the issue involved in both the appeals as to whether the extension of time for the re-importation of goods by the appellant is under the aforesaid notification or not. In this case, we are also told that the consignment has been exported after the re-importation to the buyer in Vietnam and also appellant has deposited the DEPB-benefit to the Department and hence, there is no loss to the Revenue. After going through the various e-mail exchanges between the importer and exporter, we are satisfied that in this case, export consignment could not pass the test of FDA, and accordingly, the appellant has no option for re-importation of goods which has done in this case. The

Commissioner order of refusal of extension of time of re-importation is not correct. This is one of the deserving case where we feel that extension of time is required to be allowed in the facts and circumstances of the case. We set aside the order of the commission.

9. Accordingly, we allowed both the appeals.

(Dictated and pronounced in the open court.)

(BIJAY KUMAR)
Member (Technical)

(P.K. Choudhary)
Member (Judicial)

Pooja