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

Appeal No. C/75578/2018

(Arising out of Order-in-Appeal No.Kol/Cus(Port)/AA/2034/2017 dated 28.11.2017 passed by the Commissioner of Customs (Appeals), Kolkata)

M/s Devansh Exports

Applicant (s)/Appellant (s)

Vs.

Commissioner of Customs (Port), Kolkata

Respondent (s)

Appearance:
Shri S.C.Chowdhury, Consultant for the Appellant (s)
Shri S.K.Naskar, AC(AR) for the Respondent (s)

CORAM:
Hon'ble Shri P.K.Choudhary, Member (Judicial)

Date of Hearing/Decision:- 06.08.2018

ORDER NO.FO/76491/2018

Per Shri P.K.Choudhary

Assistant Commissioner, Customs vide Order vide F.No.S41 (G)-108/2016-Exp (Refund)/27 dated 27.05.2018 passed the following order:

> *"Gentleman,*
>
> *Subject: Refund application received by this department on 16.03.2016, 18.03.2016 & 13.04.2016 in respect of Shipping Bill No.008328 dt. 21.01.08, 006039 dt. 02.11.07, 005774 dt. 22.10.07, 001224 dt. 25.05.07, 003322 dt. 26.07.07, 005078 dt. 12.09.08, 007078 dt. 25.11.08, 5661773 dt. 12.10.10, 5601663 dt. 28.01.10, 5623316 dt. 10.05.10, 5645588 dt. 09.08.10 – reg.*
>
> *Please refer to your refund application dated 16.03.16, 18.03.16, 28.03.16 on the above subject.*
>
> *From the documents submitted by you and from available records in this Department it is seen that the assessment was final at the time of export and you have not challenged the said assessment as done by the assessing officer on the shipping bill. A refund claim is not maintainable when the*

assessee did not challenge the assessment order which became final.

Thus refund claim submitted by you cannot be processed from this end for assessment being final.

Yours faithfully

S/d.
Assistant Commissioner of Customs
Customs House, Kolkata"

2. The assessee filed appeal before the Commissioner (Appeals) and in their statement of facts before the Commissioner (Appeals) they submitted details of specification of one contract as illustration/sample, whereas Order dated 27.05.2016 involved 11 (eleven) Shipping Bills.

Ld. Commissioner (Appeals) allowed the appeal filed by the assessee but has referred to only one Shipping Bill No.5645588 dated 09.08.2010 which was mentioned only as an illustration/sample. Hence, the present appeal before the Tribunal.

3. Ld. Consultant appearing on behalf of the appellant submits that specifications of only one contract namely, No.DE/SKR/01/2010-11 dated 19.07.2010 and copy of Shipping Bill No.5645588 dated 09.08.2010 alongwith relevant calculation sheet of the duty collected by the Customs was enclosed as illustration for the sake of brevity and appreciation of actual facts by the ld. Commissioner (Appeals). It is his submission that though the ld. Commissioner (Appeals) had allowed their appeal and has decided the issue in their favour but instead of 11 (eleven) Shipping Bills covered in the Order of the Assistant Commissioner dated 27.05.2016, only one shipping bill has been mentioned by the Ld. Commissioner (Appeals).

4. After hearing both sides and perusal of appeal records I find that on facts and under the circumstances of the case, though there is an error apparent from records, it would be appropriate to remand the matter to the

Ld. Commissioner (Appeals) to verify the claim of the appellant assessee, which is also evident from the Order of the Assistant Commissioner dated 27.05.2016, and to pass appropriate order in accordance with law. Needless to mention, a reasonable opportunity of hearing be granted to the appellant to present their case.

5. Appeal filed by the appellant is allowed by way of remand to the Commissioner (Appeals).

(Dictated and Pronounced in the Open Court)

S/d.
(P.K.Choudhary)
MEMBER (JUDICIAL)

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