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

Appeal No. E/498/2010

Arising out of Order-in-Appeal No. 25/Kol-II/2010 dated 31.03.2010 passed by the Commissioner (Appeals), Central Excise, Kolkata-II.

M/s. Vijai Shree Ltd.

….Appellant(s)

Vs.

Commissioner of Central Excise, Kolkata-II.

…Respondent(s)

Appearance:
Shri Anjan Dasgupta, Advocate for the Appellant (s)
Shri S. S. Chattopadhyay, Suptd. (AR) for the Respondent(s)

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

Date of Hearing/Decision: - 30.01.2019

ORDER No…FO/A/75290/2019

Per Bench:

The appeal is directed against the Order-in-Appeal No. 25/Kol-II/2010 dated 31.03.2010 passed by the Commissioner of Central Excise, Kolkata-II.

2. The appellant is engaged in the manufacture of Jute Products classifiable under Chapter 53 of the First Schedule to the Central Excise Tariff Act, 1985.

3. A fire broke out in the Sack Sewing unit of the appellant on 25.03.1991, in which the goods in the factory were damaged. The sequence of events after the fire on 25.03.1991 is listed below:-

(i) Appellant informed the local Police Station and jurisdictional Assistant Commissioner about the fire incident on 26.03.91.

(ii) Detailed Report of fire submitted to Superintendent of Central Excise, Range-III Howrah South Division.

(iii) For clearance of the salvaged goods which were not exceeding 92 cm in length, appellant submitted a Classification List.

(iv) Appellant submitted application for reemission of duty to Commissioner on 12.03.1992.

(v) Thereafter, on query by department further clarification was sent vide letter dated 06.09.1993 and letter dated 02.04.2004.

(vi) National Insurance Co. by latter dated 12.05.1992 informed the Collector of Central Excise, Calcutta-II about the details of admitted loss specifically mentioning that the admitted claim amount did not include any duty amount.

(vii) Show Cause Notice for Rs.2,12,879.11/- was issued by Assistant Commissioner of Central Excise, Howrah (South) Division on 30.03.1992.

(viii) Appellant replied to above Show Cause Notice on 11.05.1992.

(ix) Assistant Commissioner of Central Excise, Howrah (South) Division, by order dated 11.06.1993 confirmed the demand.

(x) Appellant filed appeal before the Commissioner (Appeal) on 13.09.1993.

(xi) Commissioner (Appeal) by order dated 11.02.1994 remanded the case to jurisdictional authority to pass an order after disposal of remission application.

(xii) The case was heard by Ld. Assistant Commissioner of Central Excise, Howrah (South) Division on 12.12.2006 when the

Central Excise consultant requested the Assistant Commissioner to keep the case pending till the fate of the remission application.

(xiii) Ld. Assistant Commissioner of Central Excise, Howrah (South) Division by order dated 19.01.2007 confirmed the demand on the alleged rejection of the application by Commissioner as per communication received by him.

(xiv) Appeal filed to Commissioner (Appeal) on 16.04.2007 with full pre-deposit.

(xv) Appeal dismissed by Commissioner (Appeal) Kolkata-II on 31.03.2010 (Impugned order).

(xvi) The present appeal is filed against the impugned order dated 31.03.2010.

3. The case of the appellant is argued by Shri Anjan Dasgupta, Ld. Advocate and Revenue is represented by Shri S. S. Chattopadhyay, Ld. A. R.

4. The main arguments different on behalf of the appellant is summarized below:-

(i) The demand confirmed by the impugned order will not be payable by the appellant, since the goods damaged in fire are entitled to remission from payment of duty as the goods were destroyed in fire on 25.03.1991.

(ii) In the last round of litigation before the Commissioner (Appeals), the issue was remanded to the Assistant Commissioner for passing order, denovo, after the disposal of the remission application by the Jurisdictional Collection.

(iii) The Assistant Commissioner in his order dated 19.01.2007, refereed to the communication dated 07.12.2006, in which it is claimed that the Commissioner has rejected the petition for remission. However, no such communication has been received by the appellant from the Commissioner to this effect.

(iv) He relied on the following case laws to submit that the issue of demand is to be considered only after the remission application is disposed of.

(i) Sanket Food Products Pvt. Ltd. Vs. UOI reported in 2014 (299) ELT. 426 (Bom.)

(ii) R. B. N. S. Sugar Mills Ltd. Vs. Commissioner of Central Excise, Meerut reported in 2004 (166) ELT. 327 (Tri.Del)

(iii) Triveni Engineering & Industries Ltd. Vs. Commissioner of Central Excsie, Meerut-I reported in 2002 (146) ELT.580 (Tri.Del).

(v) Finally he submitted that the Commissioner may be directed to decide the remission application and thereafter decide the demand in the proceedings.

5. The Ld. D. R. justified the impugned order. He submitted that the Assistant Commissioner has already recorded in his order that the remission application stands rejected by the Commissioner. As such he submitted that the impugned order merits no interference.

6. Heard both sides and perused the appeal records.

7. In the Jute factory of the appellant, a fire broke out on 25.03.1991, in which certain goods were destroyed. The present proceeding is for demand of duty on the goods lost in fire. In the last round of litigation before Commissioner (Appeals), the issue was remanded by him to the Original Authority for denovo decision, after the disposal of the remission application by the Jurisdictional Collector.

Even though the original authority in his order dated 19.01.2007, has referred to a communication from the Commissioner dated 07.12.2006, rejecting the application for remission, the appellant has claimed that they have received no such order from the Commissioner.

8. We have perused the case laws cited by the Ld. Advocate, in which the ratio is that application for remission is to be decided first before the question of demand for duty is to be considered. Consequentially, we find no option but to set aside the impugned order and remand the matter to the Jurisdictional Commissioner once again to decide the question of demand of duty on goods destroyed in fire, after disposing of the application for remission of duty filed by the appellant. No doubt, he will provide an opportunity to the appellant to represent his case before passing order in the denovo proceedings.

10. In the result, the impugned order is set aside and the appeal allowed by way of remand.

(Dictated and pronounced in the open court.)

(V. PADMANABHAN)
MEMBER (TECHNICAL)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

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