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

Customs Appeal No.388 of 2008

[Arising out of Order-in-Appeal No.Kol/Cus/CKP/286/2008 dated 18.09.2008 passed by Commr. of Customs (Appeals), Kolkata]

M/s Nishwet Overseas Pvt. Ltd.
1, Sardar Sankar Road, Kolkata-700026

Appellant

VERSUS

CC (Port), Kolkata
15/1 Strand Road, Kolkata-700001

Respondent

Appearance:
Shri H.K.Pandey, Advocate for the Appellant
Shri A.K.Singh, Authorized Representative for the Respondent

CORAM:
HON'BLE SHRI S. K. MOHANTY, JUDICIAL MEMBER
HON'BLE SHRI BIJAY KUMAR, TECHNICAL MEMBER

FINAL ORDER NO…76936/2019

DATE OF HEARING : 16.12.2019
DATE OF DECISION : 16.12.2019

PER S.K.MOHANTY :

This appeal is directed against the impugned order dated 18.09.2008 passed by the Commissioner of Customs (Appeals), Customs House, Kolkata.

2. Briefly stated, the facts of the case are that the appellant herein had imported a consignment of "lace" from M/s Button Express Company Ltd., Bangkok and filed the Bill of Entry for assessment before the jurisdictional Customs Authorities. The appellant had claimed the benefit of duty exemption provided under Notification No.32/97-Cus dated 01.04.1997. The conditions itemized in the said Notification for compliance were to the effect that the imported goods should undergo the process of job work within India and the job worked goods should be exported to the overseas supplier, who had supplied the imported goods to the job worker in India. In this case,

due to cancellation of job order, the appellant had re-exported the imported goods in as it is condition to the overseas supplier. Since, no job work activities were undertaken on the imported goods, the Department had entertained the belief that the conditions of Notification dated 01.04.1997 (supra) had not been fulfilled. Accordingly, show-cause proceedings were initiated against the appellant, seeking for denial of the benefit provided under the said Notification and for payment of the duty amount along with interest. The matter arising out of the show-cause notice was adjudicated by the original order dated 20.11.2006, wherein the Assistant Commissioner of Customs had confirmed the proposal made in the show-cause notice dated 18.08.2006 and 20.11.2006. On appeal against the said order dated 20.11.2006, the Ld.Commissioner (Appeals) vide the impugned order dated 18.09.2008, has dismissed the appeal filed by the appellant and upheld the adjudication order passed by the original authority.

3. The Ld.Advocate appearing for the appellant, submits that the goods in question, were imported by the appellant pursuant to the contract entered into between it and overseas supplier for carrying out the job work activities, and thus, at the time of export, the conditions of the Notification were duly complied with. He further submits that since the overseas supplier had cancelled the contract, which is an unforeseen situation, the appellant had re-exported the said goods before issuance of the show-cause notice by the Department. Thus, he submits that since at the time of issuance of show-cause notice, the imported goods were not available in India, the adjudged demands confirmed on the appellant, cannot be sustained.

4. On the other hand, the Ld.A.R., appearing for the Revenue reiterates the findings recorded in the impugned order. He further submits that since the condition contained in the Notification dated 01.04.1997 has not been complied with or fulfilled by the appellant, the adjudged demands confirmed by the Department is in conformity with the statutory provisions.

5. Heard both sides and perused the appeal records.

6. It is an admitted fact on record that the subject goods were imported by the appellant for the purpose of carrying the job work activities and for re-exportation of the job worked goods, pursuant to the contract entered into between it and the overseas supplier. However, due to certain unavoidable circumstances, the contract was cancelled by the overseas supplier, resulting in the return of the goods to the supplier. It is not the case of the Revenue that the show-cause proceedings were initiated by them before re-exportation of the goods by the appellant. In view of the fact that at the time of issuance of show-cause notice, the subject goods were not available in India and that at the time of importation of the subject goods, the conditions of the Notification were duly complied with. we are of the considered opinion that the adjudged demands confirmed on the appellant, cannot be sustained inasmuch as the duty demand along interest is confined to irregular importation of goods, which has not been specifically alleged by the department.

7. In view of the above discussions, we do not find any merits in the impugned order passed by the Ld.Commissioner (Appeals). Accordingly, after setting aside the same, the appeal is allowed in favour of the appellant.

(Dictated and pronounced in the open court.)

(S.K.Mohanty)
Member (Judicial)

(Bijay Kumar)
Member (Technical)

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