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

REGIONAL BENCH - COURT NO.2

Customs Appeal No.76628 of 2019
And
Customs Cross Objection No.76959 of 2019

(Arising out of Order-in-Appeal No.KOL/CUS(Port)/AA/185/2019 dated 05.03.2019 passed by Commissioner of Customs(Appeals), Kolkata.)

Commissioner of Customs(Port), Kolkata
(Custom House, 15/1, Strand Road, Kolkata-700001.)

...Appellant

VERSUS

M/s.Aanchal Cement Limited

.....Respondent

(23A, N.S. Road, 7th Floor, Room No.5,
Kolkata-700001.)

APPEARANCE

Shri A.K.Singh, Authorized Representative for the Appellant (s)
Shri H.K.Pandey, Advocate for the Respondent (s)

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

FINAL ORDER NO. 75253/2020

DATE OF HEARING : 31 January 2020
DATE OF DECISION : 31 January 2020

PER CORAM :

The facts of the case in brief are that the appellant had imported "Ordinary Portland Cement Clinker in Bulk" under CTH 2523.10.00. They filed Bill of Entry No.5073367 dated 05.02.2018 and claimed the benefit of Notification No.46/2011-CUS dated 01.06.2011. As the appellant had imported the subject goods from Indonesia and claimed concessional rate of duty i.e. BCD @ 5% as per the said Notification, Certificate of Origin was filed which showed that the goods were imported under ASEAN-India Free Trade Area Preferential Tariff

Agreement. Owing to certain discrepancies in the certificate of origin, the claim of benefit under the Notification was denied and the Bill of Entry was assessed by levying BCD @ 10%. The importer prayed for provisional assessment of the goods and got the goods cleared.

2. Subsequently, the importer received the rectified copy of the Certificate of Origin wherein the discrepancies pertaining to the import were duly verified by the proper officer of Appraising General Deptt., Custom House, Kolkata dated 09.03.2018 and the signature on the said COO was also verified by the proper officer of Appraising General Deptt. on 13.04.2018. However, during the course of procurement of the rectified COO by the importer, the department finalized the assessment of the Bill of Entry denying the claim of the notification benefit to the importer on the basis of an alleged letter dated 12.03.2018 wherein the importer has withdrawn his claim to the benefit of notification No.46/2011-Cus.

3. The importer wrote various letter dated 10.03.2018, 24.04.2018, 04.09.2018, 13.10.2018, 19.11.2018, 06.12.2018 and 18.12.2018 seeking refund of excess duty paid and the finalization of the said Bill of Entry after retaining the benefit of the Notification as the importer did not know that the Bill of Entry was already finalized by the lower authority. The lower authority rejected the request of the appellant and assessed the Bill of Entry finally rejecting the claim of the notification benefit by order dated 20.12.2018.

4. Being aggrieved, the importer filed an appeal before Commissioner of Customs(Appeals) against the impugned Bill of Entry on the following grounds:-

(i) After the submission of the ‘Country of Origin’ Certificate in Form A 1 duly incorporated the invoice details the same was verified by the custom authority and the importer was entitled to have the benefit of concessional rate of duty in terms of notification No.46/2011-Cus dated 01.06.2011 as amended.

(ii) The order as passed by the lower authority was mechanical in nature as no show cause notice or personal hearing was granted to the importer which is also violation to the principle of natural justice.

(iii) They had submitted the 'demurrage certificate' for assessment as insisted upon by the department in order to clear the goods expeditiously and that the initial assessment was provisional. However, the lower authority vide letter dated 21.12.2018 has ordered to assess finally the bill of entry without giving benefit of the said notification. As such the order of the lower authority is pre-judicial and has been passed in fragrant violation of the principle of natural justice.

5. Commissioner(Appeals) allowed the appeal before him. Aggrieved, the department has filed the present appeal before the Tribunal. The respondent has also filed Cross Objection.

6. Heard both sides and perused the appeal records.

7. The learned Advocate appearing on behalf of the respondent took the Bench through Para-16 of the impugned order wherein learned Commissioner(Appeals) has recorded the details of all the letters written by the respondents on various occasions.

8. We also observe that the respondents had submitted the rectified/corrected copy of the COO which was also verified by the officers of Appraising General Deptt..

9. We find that as per Sl.No.195 of the notification No.46/2011-CUS dated 01.06.2011, the concessional rate of duty is extended to the goods imported from Indonesia under CTH 252310 to 252321. We find that the respondent has imported the goods from Indonesia which is evident from the Bill of Lading and Certificate of Origin issued under ASEAN-INDIA Free Trade Area (AIFTA) between Indonesia and Republic of India vide No.0000270/PDG/2018 dated 29.01.2018. We also find that the said Certificate was duly verified by the proper officer of Appraising General Unit dated 09.03.2018 & 13.04.2018. Also the Invoice No.PWD052-2k18/SII-A dated 23.01.2018 & Country of Origin (i.e. Indonesia) as mentioned in the said certificate is also mentioned in the Bill of Entry as declared by the respondent.

10. We further find that the goods as imported by the respondent are classified under CTH 2523.10.10 which was also accepted by the lower authority. Accordingly, as per the sl.No.195 of notification No.46/2011-Cus dated 01.06.2011 amended through notification No.96/2017-Cus dated 29.12.2017, the said goods were eligible for concessional rate of duty i.e. BCD @ 5%. The only reasons for which the lower authority had denied the benefit of the notification were that – (a) the respondent could not produce the certificate of country of origin free from defects and (b) because the respondent had allegedly written a letter dated 12.03.2018 withdrawing their claim for the notification. The First Appellate authority has, in the impugned order, recorded cogent reasons for allowing the benefit of the notification. Even if the respondents had initially not claimed the benefit of notification, nothing prevents them for claiming it by filing an appeal against the assessment. Any assessment, including self-assessment can be appealed against. This was the ruling of the larger Bench of the Hon'ble Apex Court in the case of ITC Ltd. Vs. Commissioner of Central Excise, Kolkata-IV [2019-TIOL-418-SC-CUS-LB).

11. We have also considered the argument of the Revenue in the grounds of appeal that the Bill of Entry was provisionally assessed only for the purpose of determining the ship demurrage charges incurred and NOT for the purpose of country of origin certificate. It is also argued by the Revenue that till the date of finalization of Bill of Entry, the respondent herein had not contested the denial of the benefit of country of origin notification. It is now a well established legal principle that an assessment which is provisional, is provisional for all purposes. There is no provision in law to treat the same assessment as provisional for one purpose and final for another. Even if the respondent had not protested against denial of the benefit of the notification during finalization of the assessment, it does not estop them from claiming the benefit subsequently by filing an appeal against the assessment. The Appellate Authority was correct in examining such a claim and giving the benefit of Notification since he found them eligible for the same.

12. In view of the above discussion, we do not find any reasons to interfere the impugned order and accordingly the same is sustained. Appeal is therefore rejected. Cross Objection also gets disposed of.

(Operative part of the order was pronounced in the open Court.)

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

SD/

(P.V.SUBBA RAO)
MEMBER (TECHNICAL)

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