IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

Customs Appeal No.04 of 2011

(Arising out of Order bearing C.No.VIII(48)5-05/Cus/DBK-IOC/05/8253 dated 07.10.2010 passed by Commissioner of Customs, Patna)

M/s Indian Oil Corporation Ltd.
Haldia Installation,P.O.-Haldia Oil Refinery,Dist.-Purba Midnapore, W.B-721606

Appellant

VERSUS

Commissioner of Customs, Patna
C.R.Building, 5th Floor, Birchand Patel Path, Patna-800001

Respondent

APPERANCE :

Ms.Shreya Mundhra, Advocate for the Respondent
Shri Manish Mohan, Authorized Representative for the Appellant

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO.75414/2023

DATE OF HEARING : 09 .05.2023
DATE OF DECISION : 09.05.2023

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein a request for conversion of free shipping bills to drawback shipping bills was denied by the ld.Commissioner.

2. The facts of the case are that the appellant is a Public Sector Undertaking and engaged in the business on manufacturing and trading of petroleum products. The appellant exported LPG (non-domestic) to Nepal through Raxaul and Jogbani Land Customs Station. With effect from 1st March, 2010, the appellant decided to undertake such export under claim of duty drawback, but due to inadvertent mistake during the period 1st April, 2010 to 3rd May, 2010, the goods were exported under ex-bond shipping bills instead of drawback shipping bills. The

appellant filed application on 30th June, 2010 for conversion of free shipping bills to drawback shipping bills. The appellant also filed relevant documents, but the request of the appellant was denied . Against the said order, the appellant is before us.

3. The ld.Advocate appearing on behalf of the appellant, submits that Section 149 of the Customs Act, 1962, permits the amendment of shipping bill on the basis of documentary evidence which was in existence at the time of export of goods and it is her contention that the documentary evidence was in existence at the time of export and those documents have not been considered by the adjudicating authority in the impugned order. On this ground alone, the impugned order is to be set aside. To support her contention, she relied on the order passed by this Tribunal in their own case vide Final Order No.FO/75188/2016 dated 17.02.2016.

4. She further submits that non-declaration of entitlement of drawback on the shipping bill is only a procedural lapse and for that, substantive benefit cannot be denied. She further submits that there is no provision under Section 149 of the Act or Rule 12 (1)(a) of the Drawback Rules, which restricts conversion of free shipping bills in case of brand rate drawback. Therefore, the Circular No.4/2004-Cus dated 16.01.2004, has been issued in excess of powers granted under the Act as well as Drawback Rules and therefore, the impugned order is liable to be set aside.

5. On the other hand, the ld.A.R. for the Revenue, opposes the contentions of the ld.Counsel for the appellant and submits that in the light of the decision in the case of Cargil India Pvt. Ltd. Vs.

Commissioner of Customs & Central Excise, Visakhapatnam II reported in 2015 (325) ELT 801 (S.C.), the Circular No.4/2004-Cus dated 16.01.2004 is applicable in the facts and circumstances of this case.

6. Heard the parties and considered the submissions.

7. We find that that Section 149 of the Customs Act, 1962, deals with the situation and clearly permits the amendment of shipping bill on the basis of documentary evidence which was in existence at the time of export of goods. Admittedly, there is no examination of documents is placed on record by adjudicating authority while considering the claim for conversion of free shipping bills to drawback shipping bills. In that circumstances, this Tribunal in the appellants' own case has observed as under :

> *"5. The conclusions from the case laws relied upon by the appellant is that a power given by Sec 149 of the Customs Act, 1962 to the officers under a statute cannot be curtailed by a Circular issued by CBEC. In view of the above observations and settled proposition law, the order dated 01.11.2007 passed by Commissioner of Customs, Patna is set aside and the matter is remanded to him to allow the conversion of free shipping bills to DBK shipping bills under Section 149 of the Customs Act, 1962, if otherwise permissible, independent of CBEC Circular dated 16.01.2004, after extending an opportunity of personal hearing to the appellant."*

8. Admittedly, in this case, no document has been examined and drawback claim has been rejected without any observations. Therefore, we set aside the impugned order and hold that in terms of Section 149

of the Customs Act, 1962, the appellant is entitled for conversion of free shipping bills to drawback shipping bills subject to verification of the documents, which were available at the time of export.

9. In view of the above, we remand the matter back to the adjudicating authority to examine the documents and thereafter to allow the conversion of free shipping bills to drawback shipping bills by keeping all others issues open.

10. The appeal filed by the appellant is allowed by way of remand.

(Dictated and pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

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