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

REGIONAL BENCH – COURT NO.1

Customs Appeal No.76019 of 2016
(On behalf of Appellant)

(Arising out of Order-in-Original No.C.No.VIII-Cus-48(3)IMP/PDP/2012/4952 dated 10.08.2015 passed by Commissioner of Customs, Paradeep)

M/s Jindal Steel & Power Limited
Plot No.474, Sahayog Building, Bank Street, P.O. Paradeep-754142, Odisha

Appellant

VERSUS

Commissioner of Customs, Paradeep
Paradeep Customs Division, Customs House, Paradeep

Respondent

APPERANCE :

Shri Rahul Tangi, Advocate and Ms.Payal Bharwani, C.A. for the Appellant
Shri Subrata Debnath, Authorized Representative for the Respondent

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

FINAL ORDER NO.77612/2023

DATE OF HEARING : 06.12.2023
DATE OF DECISION : 06.12.2023

Per Ashok Jindal :

By way of impugned order, the appellant was debarred from filing Bill of Entry manually as per Section 46 of the Customs Act, 1962.

2. The facts of the case are that the appellant is a manufacturer of steel products and undertook import and export the finished goods. In the month of October, 2010, the appellant exported iron ore pellets vide two manually filed shipping Bills of Entry both dated 12.10.2010 & 15.10.2010 to the Customs House, Paradeep, on payment of the applicable export duty.

2.1 With regard to such export, the appellant applied for DEPB scrip under Para 4.3 of FTP 2009-14 read with Para 4.37 to 4.43 of the HBP

Volume I, 2009-14. Accordingly, the Joint Director of Foreign Trade, Paradeep Port, issued such DEPB post export authorization dated 12.02.2014 for a duty credit of Rs.22,44,375/- for utilization towards import of goods. Such DEPB license was issued in physical form and duly registered by the Paradeep Customs House on 27.03.2014.

2.2 For utilization of the duty credit scrip for imports at Kolkata, the appellant got the Telegraphic Release Advice (TRA) from the Customs Authorities at Paradeep to register the same at Kolkata. However, such TRA was returned by the Customs Authority, Kolkata on 01.10.2015 stating that incoming RA cannot be registered for central site.

2.3 Thereafter, when the appellant requested the Customs Authority, Paradeep to register the DEPB Scrip online, such request was rejected by stating that since the Shipping Bills were filed manually, DEPB scrips issued physically to the appellant cannot be linked to Customs Portal.

2.4 In that situation, where the appellant filed the Bills of Entry online due to introduction of EDI System w.e.f. 08.04.2011, but not being able to utilize the genuine DEPB scrip due to system issues as described above, the appellant requested the Customs Authorities, Paradeep, to permit the appellant to file manual Bills of Entry in terms of Board's Circular No.401/81/2011-Cus III dated 04.05.2011 read with corrigendum dated 12.05.2011 to undertake imports, so that, the duty credit endowed vide the DEPB Scrip can be utilized. However, such request was also rejected.

2.5 Against the said order, the appellant is before us.

3. The ld.Counsel for the appellant submits that in the light of the statutory provisions, manual filing of Bill of Entry ought not have been

denied to the appellant. This lead to denial of eligibility of the scrip which could otherwise be used for payment of Customs duty on imports. It is his submission that in terms of Section 46 of the Customs Act, 1962, they are entitled to file Bill of Entry manually and to utilize for DEPB Scrip for payment of duty, but the same was denied to them. It is further submitted that as the DEPB Scrip has been withdrawn, in that circumstances, at the present appellant is not able to utilize DEPB Scrip. In that circumstances, the cash refund be granted to them in the light of the decisions of this Tribunal in the cases of Commissioner of Customs & Excise, Patparganj, Delhi Vs. Artex Textile Private Limited reported in 2020 (374) ELT 122 (Tri.-Del.) & Commissioner of Customs, New Delhi, TKD Export Vs. Sel Manufacturing Company Limited reported in 2019 (3) TMI 718 – CESTAT, New Delhi.

4. On the other hand, the ld.A.R. for the Revenue, reiterated the impugned order.

5. Heard both the parties and considered the submissions.

6. We find that the facts, which are not in dispute, are that the appellant was disallowed to file the Bill of Entry manually in terms of Section 46 of the Customs Act, 1962, which is the violation of principles of natural justice. The said act of the Adjudicating Authority debarred the appellant to avail the benefit of DEPB Scrip. In that circumstances, as the appellant is not able to take the benefit of DEPB Scrip, they are entitled to cash refund in terms of the order of this Tribunal in the case of Artex Textile Private Limited (supra), wherein this Tribunal has observed as under :

*"**14.** Reference also needs to be made to a Circular dated 1 July, 2011 which states that since the DEPB Scheme stands extended till 30 September, 2011, exports made till the said date alone would be entitled to the benefit. Thus, the importers were allowed to import goods by debiting DEPB scrips only up to 30 September, 2011. Such recredits of DEPB scrips could have been utilized only within the period provided in the Notification, which period expired more than six years ago. In this view of the matter when the DEPB scrips are no longer valid, the claim of the Department that refund of excess duty paid must be recredited in such scrips would actually result in denial of refund claim to Artex Textile.*

***15.** The payment of duty by debiting the DEPB scrips is actually payment of duty as it is a valid mode of payment. Therefore, Artex Textile paid duty at the time of importation. It is entitled to refund of the duty and the Department cannot be permitted to pay it by a mode which is not in existence today. In any case, it should not matter to the Department by which mode the payment is made, once it is found as a fact that Artex Textile is entitled to refund of duty paid by Artex Textile."*

7. The same view has been taken by this Tribunal in the case of Sel Manufacturing Company Limited (supra), wherein this Tribunal has held as under :

"20. Further, we also agree with the observations made in the impugned order dated 11.7.2018 of the Commissioner of Customs (Appeals) that refund claim cannot be denied merely on the ground that there is no provision under law. Once it is accepted that the benefits surrendered by the respondents are in the nature of amount deposited during investigations, then the refund of the excess amount has to be paid/refunded."

8. In view of the above judicial pronouncements, we hold that the appellant is entitled for cash refund as per entitlement of DEPB Scrip.

9. In these terms, the appeal is allowed with consequential relief, if any.

(Dictated and pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

(Rajeev Tandon)
Member (Technical)

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