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

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 75079 of 2019

(Arising out of Order-in-Appeal No.52/CUS/CCP-GST/2018 Dated 27.09.2018 passed by Commissioner (Appeals), GST, CX & Customs, Bhubaneswar)

M/s. Bothra Shipping Services Pvt. Ltd.
(Qr. No. JC/13, AT/PO: Madhuban Paradeep &
D Arvind & Associates LLP,
3rd Floor, Bhagwati Palace, No. 90, J Block, 3rd Avenue,
Anna Nagar East, Chennai-600102)

Appellant

VERSUS

Commr. of Customs (Preventive), Bhubaneswar
(Central Revenue Building, Rajaswa Vihar, Bhubaneshwar-7, Odisha)

Respondent

With

Customs Appeal No. 75080 of 2019

(Arising out of Order-in-Appeal No.51/CUS/CCP-GST/2018 Dated 27.09.2018 passed by Commissioner (Appeals), GST, CX & Customs, Bhubaneswar)

M/s. Bothra Shipping Services Pvt. Ltd.
(Qr. No. JC/13, AT/PO: Madhuban Paradeep &
D Arvind & Associates LLP,
3rd Floor, Bhagwati Palace, No. 90, J Block, 3rd Avenue,
Anna Nagar East, Chennai-600102)

Appellant

VERSUS

Commr. of Customs (Preventive), Bhubaneswar
(Central Revenue Building, Rajaswa Vihar, Bhubaneshwar-7, Odisha)

Respondent

APPEARANCE :
None for the Appellant
Mr. S. Debnath, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

FINAL ORDER NO.75750-75751/2024

Date of Hearing : 22 April 2024
Date of Decision: 22 April 2024

PER R. MURALIDHAR:

No one has appeared on behalf of the Appellant inspite of notice. It is seen from the record that several adjournments have already been granted to them. In the interest of justice, the Appeals were taken up for disposal with the help of the Learned AR.

2. In these Appeals, the issue pertains to the refund claimed by the Appellant for the excess Customs Duty paid by them. The Bills of Entry were initially assessed on provisional basis and they were finalized at a later date. As per the Board's Circular, the party has to file all the details within 5 days based on which the finalization has to be completed. In all these cases, the provisional assessment has been completed after more than one month as the details were provided by the Appellant much later than 5 days. Based on the final assessment, the party came to know that they have paid excess Customs Duty. Accordingly, they have filed their refund claim for Rs. 1,06,029/- (in respect of Appeal No. C/75079/2019) and Rs. 4,81,144/- (in respect of Appeal No. C/75080/2019). The Adjudicating Authority after going through the factual details and verifying the documentary evidence sanctioned the refund. Being aggrieved, the Department has filed their Appeals before Commissioner (Appeals). He has set aside the OIO and allowed the Appeals filed by the Department. Being aggrieved, the Appellant has filed the present Appeals.

3. I find that the provisionally assessed Bills of Entry were finally assessed within a period of one to three months in all these cases. The CBEC Circular 58/97 dated 6.11.1997 gives a direction to the authorities to ensure that the finalization is taking place within a reasonable time and the party should have filed all the required details within five days. As per the Commissioner, this has not been done by the Appellant. On this sole ground, the Commissioner (Appeals) has set aside the refund granted and allowed the Appeals filed by the Revenue.

4. On going through the Para 11 of the Circular No. 58/97 dated 6.11.1997, it is seen that no particular time frame has been given for filing the refund claim. Therefore, in such a case, the assesse is required to file the refund claim within one year in terms of Section 27 of the Customs Act, 1962.

5. Admittedly, there is no dispute that the Appellant has filed the refund claim within one year as has been correctly held by the Adjudicating Authority in the Order-in-Original passed by him. Further, it is seen that the Department has not taken any objection about the late filing of the details beyond 5 days anywhere. There is no allegation that the party has filed the details after five days but should have been filed within five days as per Circular. This issue has not been raised and no Show Cause Notice was issued on this count. The Department also was satisfied with the Finalization Order and no further Appeal was filed by the Revenue against the Finalization Order. Therefore, in such cases, the Revenue is precluded from raising these issues when the refund claim is filed by the party consequent to the OIO passed finalizing the assessment.

6. Considering these factual details and statutory provisions, I find that the impugned Orders-in-Appeal are legally not sustainable. Therefore, I set aside the same and allow the Appeals filed by the Appellant.

7. The Appellant would be eligible for consequential relief, if any, as per law.

(Dictated and pronounced in the open court.)

Sd/-
(R. Muralidhar)
Member (Judicial)

Pooja