IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.

Appeal No. C/676/2011

(Arising out of Order-in-Appeal No.339 (Gr.II C & D)/2011(JNCH)/IMP-290 passed by the Commissioner of Customs (Appeals),Mumbai-II, JNCH, Nhava Sheva))

M/s. Atul Limited : **Appellant**

VS

Commissioner of Customs, Mumbai-II, JNCH, Nhava Sheva : **Respondent**

Appearance

Shri Rakesh Shah, Sr. Manager for Appellant
Ms. Trupti Chavan, Asstt. Commr. (A.R) for respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)
Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

Date of hearing : 13/11/2018
Date of decision : 13/11/2018

ORDER NO. A/87979/2018

Per : Dr. D.M. Misra

This is an appeal filed against Order-in-Appeal No. 339 (Gr. II C & D)/2011(JNCH)/IMP-290 passed by the Commissioner of Customs (Appeals),Mumbai-II, JNCH, Nhava Sheva.

2. Briefly stated the facts of the case are that the appellant had initially exported "P-Anisaldehyde", and the same were returned back to India for quality specification. Consequently the appellant sought clearance of the said returned goods on re-import and filed

bills of entry No. 0621 dt. 10.12.1997 and 0264 dt. 27.3.1998, which were assessed to duty under Notification No. 94/96-Cus and they paid CVD @ of 18%. Since Notification No. 158/95-Cus. provided exemption from CVD and customs duty for such goods on its re-export, the appellant filed refund claim of the CVD paid on 3.7.1998 in accordance with the notification No. 158/95, within the time limit prescribed under the provisions of Customs Act. The adjudicating authority rejected the refund claims on 19.2.2000. Aggrieved by the said order, they filed appeal before the Ld. Commissioner (Appeals), who in turn, rejected the same. Consequently, they filed appeal before this CESTAT and by order dt. 18.3.2004, the matter was remanded by the Tribunal to the original authority to examine whether the condition Nos. 4(b), (c) and (d), of the said notification are complied with. after verifying the permission obtained from the Central Excise Authority in this regard and thereafter re-assess the goods under Notification No. 158/95 and re-determine the refund as per Section 28 of the Customs Act, 1962. Pursuant to the said direction they obtained certificate from the Assistant Commissioner of Central Excise and Customs Division-I, Ankleshwar dt. 18.5.2006, where under, it is certified that the appellant had fulfilled the condition Nos. 4(b),(c) and (d) of the Notification No. 158/95-Cus.

3. In the denovo proceeding, the Dy. Commissioner of Customs (Import) vide order dt. 3.5.2010, rejected the refund claim on the ground that the appellant had not challenged the original order of assessment. Aggrieved by the said order, they filed appeal before

the Ld. Commissioner (Appeals), who in turn, rejected their appeal. Hence, the present appeal.

4. The Ld. Authorized Representative for the appellant submits that this is the second round of litigation before this Tribunal. After initial rejection of their refund claim, the matter reached before this Tribunal and on examination of the issues in detail, this Tribunal remanded the matter to the adjudicating authority with a specific observation and direction to examine the claim under Notification No. 158/95-Cus., that is, whether the appellant satisfy the condition Nos. 4 (b), (c) and (d) of the Notification No. 158/95-Cus. It is his contention that pursuant to the said order of the Tribunal they approached the jurisdictional Assistant Commissioner where the goods were brought and reprocessed to issue necessary certificate about fulfillment of conditions mentioned in the Notification and accordingly a certificate was issued to the appellant. It is his contention that rejecting the refund claims on the ground that they had not filed appeal against the earlier assessment order, therefore, bad in law and beyond the scope of remand of the CESTAT order dt. 18.3.2004.

5. Ld. AR for the Revenue reiterates the findings of the Ld. Commissioner (Appeals).

6. We find that undisputedly, the appellant had re-imported the goods initially exported by them for the purpose of quality improvement. At the time of re-import they paid 18% CVD in accordance with Notification No. 94/96Cus.. This Tribunal in the earlier round of litigation observed that the goods were exported on

23.9.97 and thereafter re-imported, processed and re-exported within six months. Thus, it was concluded that the conditions of the Notification No. 158/95-Cus are satisfied. Besides, it was observed that the appellant had obtained permission under Rule 173 MM of erstwhile Central Excise Rules.1944 to reprocess the goods. In these circumstances, the Tribunal directed verification of fulfillment conditions namely 4(b) (c) & (d) of Notification No.158/95-Cus. Pursuant to the said observation/direction, the appellant approached the Jurisdictional Assistant Commissioner of Central Excise where the re-imported goods were processed and obtained a certificate stating that they had complied with the conditions No. 4(b), (c) & (d). Thus, rejecting the refund claim in the *denovo* proceedings stating that the original order rejecting the refund claims were not challenged, in our opinion, is contrary to the remand order of this Tribunal dt. 18.3.2004, hence deserves to be set aside.

7. In the result, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Operative portion of the order pronounced in court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. D.M. Misra)
Member (Judicial)

SM.