IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

WEST ZONAL BENCH AT MUMBAI

COURT No. I

APPEAL No. C/1191/2008

(Arising out of Order-in-Appeal No. 244 (DFIA)/2008 (JNCH) dated 07.08.2008 passed by Commissioner of Customs (Appeals), JNCH, Mumbai-II)

Commissioner of Customs (Export), Nhava Sheva **Appellant**

Vs.

Global Exim **Respondent**

Appearance:

Ms. P.V. Sekhar, Joint Commissioner (AR), for appellant
Shri Prakash Shah, Advocate, for respondent

CORAM:

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

Date of Hearing: 11.01.2019
Date of Decision: 11.01.2019

ORDER No. **A/85508/2019**

Per: Sanjiv Srivastava

This appeal filed by the revenue is directed against order in appeal No 244 (DFIA)/2008, JNCH dated 07.08.2008 of the Commissioner Customs (Appeal) JNCH Nhava Sheva. By the said order Commissioner (Appeals) has held as follows:

"6. In view of the above, the order dated 01.08.08 of the ld Asst Commissioner DFIA, JNCH Nhava Sheva is set aside and the CVD payment endorsement on the said

seven DFIASs are directed to be deleted within seven days to show exemption from payment of Additional Customs Duty on importation of goods under these seven DFIA's."

2.1 M/s Global Exim (Respondents) purchased seven transferable DFIA Licenses from M/s Parle Products Pvt Ltd for claiming exemption from payment of Customs duty against Imports there under.

2.2 At the time of verification of the exports made by M/s Parle Products Pvt Ltd, the original licensee, under DFIA licenses, it was noticed that the goods exported were manufactured by availing CENVAT facility. The licensing authority had while granting transferability specified that imports under this DFIA shall be subject to payment of applicable additional duty of Customs/ Excise Duty at the time of imports. Licensing authority had further endorsed that in case where CENVAT facility has not been availed exemption from additional duty of Customs/ Excise Duty would be available.

2.3 The condition under para (v) of Notification No 40/2006-Cus specifically provided that the export obligation specified in the authorization should be discharged by exporting resultant products in respect of which rebate of duty or CENVAT credit has not been availed.

2.4 Thus verification of the licenses was completed after making endorsements in the license that import against the DFIA would be allowed subject to payment of applicable additional duty of Customs/ Excise.

2.5 Respondents who had purchased the licenses have vide their letter dated 30.07.2008 requested for deletion of the endorsement made in the authorization. Appraising Officer in his remark to the Assistant Commissioner, on this letter itself mentioned that as no document was submitted to support the fact that CENVAT facility was not availed the request could not be considered at that stage. This remark was acknowledged by the Assistant Commissioner on 01.08.2008.

2.6 Against acknowledgement of the said remark by the Assistant Commissioner, Respondents filed the appeal before Commissioner (Appeal). Commissioner (Appeal) treating the said remark to be the order of Assistant Commissioner proceeded with the appeal and decided the issue as per the order referred in para 1, supra.

2.7 Committee of Chief Commissioner on examination of the order did not find the order to be legal and proper and directed filing of the appeal before tribunal. Hence this appeal by revenue.

3.1 In their appeal revenue has assailed the order of Commissioner (Appeal) stating-

i. As no order or decision was passed against the respondents under Customs Act, 1962 allowing the appeal against remark dated 01.08.2008 on the request letter dated 30.07.2008 is not justified.

ii. The order of Commissioner (Appeal) is in total violation of principals of natural justice without having any stand of revenue on the issue before him for consideration in the appeal filed before him.

iii. Respondents who had purchased the license and are transferee was not concerned with discharge of export obligation and being third party had no right to apply for deletion of the said endorsement made on the license.

iv. The direction of the Commissioner 9appeal) directing for deletion of the said endorsement is contrary to the conditions imposed by the Notification No 40/2006-Cus dated 01.05.2006. Statutory provisions in EXIM Policy prior to 01.04.2007 also supported the said endorsements.

4.1 We have heard Ms P V Sekhar Joint Commissioner, Authorized Representative for the revenue (appellant) and Shri Prakash Shah, Advocate for the respondents.

4.2 Both Authorized Representative and Learned Counsel agree that no order has been passed by the jurisdictional Assistant/ Deputy Commissioner, disposing of the request letter dated 30.07.2008. Since no order has been passed by the jurisdictional officer in the matter the Appeal before the Commissioner (Appeal) and impugned order are pre-mature.

5.1 The appeal was filed by the respondents before the Commissioner (Appeal) against the endorsement made on the letter dated 30th July 2008 as follows:

"DFIA issued to M/s Parle Product Pvt Ltd had not submitted any documents in regards to the fact that CENVAT facility has not been availed by them & granting exemption from additional Custom Duty at any stage.

Therefore the request for deletion of CVD on DFIA's cannot be considered at this stage.

-sd/ 31.07	*-sd/31.07*
P. K. Arora	*Shiv Pratap Singh*
AO	*Asstt Commr /DFIA"*

5.2 From the above it is quite evident that the said endorsement is not a decision in itself which could have been appealed before Commissioner (Appeal). Further from the endorsement it is also not evident that whether the same was ever communicated to the respondent. Such an endorsement by the appraising officer and

Assistant Commissioner on any receipt cannot be considered as decision which could have been appealed against before the Commissioner (Appeal). Such an endorsement is nothing but part of internal discussions between the two.

5.3 Thus in our view Commissioner (Appeal) was clearly in error when he entertained the appeal against the endorsement made on the request letter of the Appellants and passed the impugned order. Such an order cannot be sustained

5.4 Since the request letter dated 30th July 2008 is still to be considered by the jurisdictional Assistant/ Deputy Commissioner and disposed of by him by way of a speaking order we do not consider it necessary to go into the merits of the case. All the questions of law and facts in respect of this request are left open for the Assistant/ Deputy Commissioner to decide.

5.5 In the result we allow the appeal filed by the revenue and remand the matter to original adjudicating authority for consideration of the request letter dated 30th July 2008. Needless to say since the matter is quite old, Assistant/ Deputy Commissioner should dispose of the said request letter within three months of the receipt of this order after following the principles of natural justice. Respondents should fully cooperate in the matter for early disposal of the request by the adjudicating authority.

6.1 Appeal is disposed off as stated in para 5.5.

(Pronounced in court)

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

(Sanjiv Srivastava)
Member (Technical)

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