CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
WEST ZONAL BENCH

Customs Miscellaneous Application (EH) No.85767 of 2019
(on behalf of Appellant)
in
Customs Appeal No. 85571 of 2015

(Arising out of Order-in-Original CAO No. 252/2000/CAC/CC SPS dated 27.07.2000 passed by Commissioner of Customs (Export), Mumbai)

M/s. Swapnika Tiles P. Ltd. **Appellant**
E-3 & 4, Ambaji Indl. Area,
Abu Road 307 026,
Dist. Sirohi, Rajasthan.

Vs.

Commissioner of Cus. (Exp.), Mumbai **Respondent**
New Custom House,
Ballard Estate,
Mumbai 400 001.

Appearance:

Ms. Priyanka Goel, Advocate for the Appellant
Ms. Trupti Chavan, Authorised Representative for the Respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

FINAL ORDER NO. **A/86587/2019**

Date of Hearing: 09.09.2019
Date of Decision: 09.09.2019

PER: S.K. MOHANTY

Heard both sides.

2. The appellant has filed this miscellaneous application, seeking for early hearing of appeal. On going through the averments made in the said application, we find that this is a fit case for consideration of the prayer in support of early hearing of appeal. Accordingly, the miscellaneous application filed by the appellant is allowed. The issue involved in this case lies in a narrow compass and accordingly,

with the consent of both sides, the appeal is taken up for final hearing and disposal today.

3. In the impugned order dated 27.07.2000, the learned Commissioner of Customs, Mumbai has confirmed the duty liability and imposed penalty on the appellant on the ground that the condition prescribed under Notification No. 203/92-Cus. dated 19.05.1992 has not been complied with inasmuch as, as per the said notification, the appellant as an importer was not permitted to avail modvat credit in terms of erstwhile Rule 56A and Rule 57A of the Central Excise Rules, 1944.

4. At the outset, the learned Advocate appearing for the appellant submits that the show cause notice, seeking for confirmation of the adjudged demands, was not served on the appellant and the present impugned order was passed without affording due opportunity of personal hearing. She further submits that the appellant had obtained certificate from the jurisdictional Superintendent of Central Excise, confirming that no modvat credit was availed by the appellant in respect of the imports made under the said notification. Thus, she submits that the adjudged demands confirmed in the impugned order cannot be sustained.

5. On the other hand, the learned AR appearing for Revenue reiterates the findings recorded in the impugned order.

6. On a close scrutiny of the case records, we find that the impugned order was passed, mentioning the name of M/s. Western Optical Co. as the noticee. The said apparent mistake was subsequently rectified by issuance of corrigendum dated 14.08.2000, wherein

the name of the noticee was substituted as M/s. Swapnika Tiles P. Ltd., who is the appellant before us. Thus, it is evident that the adjudication process was not completed as per the canons of judicial ethics expected to be followed by the adjudicature. Hence, we are of the considered view that the matter needs reconsideration for a proper fact finding. Further, we also find that the appellant had enclosed the certificate issued by the jurisdictional Superintendent of Central Excise in context with non-availment of modvat credit on the disputed goods imported by the appellant. However, at this juncture, we cannot express any opinion with regard to the content of the certificate and the fact regarding actual availment of the modvat credit, which is also required to be examined at the original stage.

7. Therefore, after setting aside the impugned order, we remand the matter to the original authority for a fresh fact finding on the issues involved in this appeal. The appellant is at liberty to raise any other ground(s) at the time of adjudication of the matter. Needless to say that opportunity of personal hearing should be granted to the appellant before deciding the issue afresh.

8. In the result, the appeal is allowed by way of remand.

(Dictated and pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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