CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.405

Custom Appeal No. 918 of 2012

(Arising out of Order-in-Original No. CC/MAK/13/2012-13 ADJ ACC (I) dated 24.05.2012 passed by the Commissioner of Customs (Import), Mumbai)

CC (ACC & IMPORT) Mumbai ....Appellant
Air Cargo Complex, Sahar
Andheri (East)
Mumbai-400099

VERSUS

M/s Neoteric Infomatique Ltd. ....Respondent
Plot No. 1 Neelima Motor Compound
Khokhani Indl. Compound Datvali Vasai (E)
Thane Pin Code-401208

APPEARANCE:

Shri Manoj Kumar, Assistant Commissioner Authorised Representative for the Appellant
Shri. Lakshmi Menon, Advocate for the Respondent

CORAM:

HON'BLE MR. CJ MATHEW, MEMBER (TECHNICAL)
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO. A/87636/2019

Date of Hearing: 11.03.2019
Date of Decision: 11.03.2019

PER: AJAY SHARMA

This appeal has been preferred by Revenue against the order dated 24.5.2012 passed by the Commissioner of Customs (Import), Mumbai by which the learned Commissioner confirmed the duty demand of Rs.18,93,055/- and held that the respondent herein are eligible for exemption under notification 29/2010 dt. 27.7.2020 and are not eligible for CVD exemption under notification No. 6/2006 dtd. 1.3.2006.

2. The facts giving rise to the filing of the Appeal are as follows. M/s. Neoteric Informatique Ltd.-respondent herein imported microprocessors falling under CETH 84733010 worth Rs.4,46,09,914/-under 21 B/E through Air Cargo Complex, Mumbai and claimed exemption of CVD under Notification No. 6/2006-CE dated 1.3.2006 Serial No. 17 as well as SAD under Notification No. 29/2010 dated 27.2.2010 Serial No.1. According to the department since the respondent has availed exemption under Notification 6/2006 dated 1.3.2006 Serial No.17 for the imported goods it appears that the goods are not meant for retail sale as they are internally used within computers as per Notification aforesaid and therefore the exemption under Notification No.29/2010 Serial No.1 which are for goods being sold in retail, appears not applicable. Accordingly a show case cum less charge notice dated 1.9.2010 was issued u/s. 28 of the Customs Act, 1962 for short levy of SAD which works out to Rs.18,93,066/- on the 21 Bills of Entry alongwith interest.

3. We have heard both sides and perused the case records. Learned Authorised Representative for the Revenue and learned counsel for the respondent and have also perused the records of the case. Apart from other submissions, one of the contentions raised by the learned Aurhorised Representative is that the show cause notice was confined to short levy of SAD by the importer/respondent and no issue about eligibility of CVD exemption under Notification No.6/2006

was mentioned in the said notice, whereas in the impugned order the Adjudicating Authority decided about the eligibility of CVD exemption also. He further submits that as per the principles of natural justice, it was incumbent upon the Adjudicating Authority to give notice before examining the eligibility of CVD exemption under the notification aforesaid and since it was not done therefore the impugned order is liable to be set aside on this ground alone.

4. As the objection raised by the learned Authorised Representative goes to the root of the matter therefore we find it appropriate to decide this issue firstly. On perusal of the show cause notice dated 1.9.2010 it is clear that it was issued only for the purpose of recovery of short levy of SAD for imports made under 21 Bills of Entry from 30.3.2010 to 7.7.2010. Neither in the records of personal hearing nor in the impugned order there is any indication whether on the aspect of ineligibility of CVD exemption either of the sides was put to notice. In the absence of it, there is clear violation of principle of natural justice and it vitiates the entire proceedings. There was no occasion for the learned commissioner to comment or pass any order about CVD exemption under Notification No.6/2006-CE dated 1.3.2006 as it was beyond the scope of show cause notice. Both, the department as well as the respondent were put under disadvantageous position by not providing them an effective opportunity to present their case. Therefore we have no hesitation in setting aside the impugned order on this ground alone and remanding the matter back to the original authority i.e. the learned Commissioner with a direction to decide the matter afresh after

giving a reasonable opportunity of hearing to both the sides and also after properly following the principle of natural justice.

5. The Appeal is therefore allowed by way of remand.

(Order pronounced in the open Court)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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