CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. 01

Customs Appeal No. 86090 Of 2022

(Arising out of Order-in-Appeal No. MUM-CUS-KV-EXP-167/2021-22 NCH dated 10.02.2022 passed by Commissioner of Customs (Appeals), Mumbai-I)

Bharat Heavy Electricals Ltd. **.....Appellant**
14/15th floor, world Trade Centre,
Cuffe Prade, Mumbai-400 005.

VERSUS

Commissioner of Customs-Mumbai-Export-I **.....Respondent**
NCH, Mumbai 2nd Floor, New Custom House,
Soorji Vallabhdas Road, Ballard Estate,
Mumbai-400 001.

<u>Appearance:</u>

Shri C. M. Sharma, Consultant for the Appellant
Shri Ashwini Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. C.J. MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85905/2023

Date of Hearing : 01.12.2022
Date of Decision : 29.05.2023

PER : S.K. MOHANTY

Brief facts of the case are that the appellant herein, M/s Bharat Heavy Electricals Limited (M/s BHEL) had filed an application dated 19.02.2020 before the Export Division (Assessment), Customs House, Mumbai for amendment in drawback Shipping Bill No. 2356231 dated 27.02.2019 filed in respect of exports made by them under Advance Licence (DEEC)-cum drawback scheme. In the Shipping Bill, the appellant had initially mentioned the code '9801', instead of the applicable code for Brand rate fixation as '980788411B'. The amendment was sought on the ground that the appellant was intending to claim brand rate of drawback in terms of Circular No. 29/2015-Customs dated 16.11.2015. However, the request made the appellant was turned down by the adjudicating authority vide letter dated 03.03.2020, assigning the reason that there was no evidence on record to show that the error was genuine. Further, it has also been contended that the exporter-appellant did not submit any documentary evidences, present at the time of export, substantiating their claim for amendment of drawback serial number and that the export invoice also does not mention the claim for the appropriate code as 98078411B. Being dis-satisfied with the letter dated 03.03.2020, the appellant had preferred appeal before the learned Commissioner of Customs (Appeals), Mumbai –I. The said appeal of the appellant was disposed of vide the impugned order dated 10.02.2020, in rejecting the same. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

2. The appellant has filed this appeal contending *inter alia*, that the amendment was sought based on the evidences/documents existing prior to exportation of goods and since, no fresh documentation was done post export of goods, the request for amendment merits consideration under Section 149 of the Customs Act, 1962; that the Drawback Rules do not provide for any stipulation or restriction for amendment of the Shipping Bill; that the error arising out of accidental slip or omission to mention the correct code can be corrected subsequently in terms of Section 154 *ibid*.

3. Heard both sides and examined the case records.

4. In the grounds of appeal, the appellants have contended *inter alia*, as follows:

> (a) in terms of the contract dated 29.01.2015, the export goods were proposed to be partly covered under the Advance Authorization License and were proposed to be partly covered with claim for Drawback under Brand Rate Scheme under DEEC with Drawback;

(b) that the application for the said purpose was made and thereupon, the Advance Authorization License dated 05.01.2018 and 16.11.2018 were issued by the competent authority;

(c) that the invoice dated 31.01.2019 was issued from the plant location at Hyderabad, mentioning therein the HSN Classification reference number as 84.11.82.20 and the annexure attached to the invoice has also stated the items for Drawback and under DEEC Scheme in detail;

(d) that the application dated 29.05.2019 was filed by the appellants in the office of the jurisdictional Customs Commissionerate at Hyderabad in respect of the export shipment, indicating the Brand Rate Fixation of Drawback and the said application was filed within the stipulated time frame of the three months from the date of export.

5. We find that by referring to the above sequence of events and also various correspondences exchanged with the department, the appellants wanted to impress upon the fact that the Brand Rate Fixation claim was existed at the time of export and thus, the application was appropriately made for amendment of the Shipping Bill in terms of Section 149 and Section 154 of the Customs Act, 1962. However, on examination of the orders passed by the lower authorities, we find that the refence of documents relied upon by the appellants in this appeal were not at all considered by them and the claim of the appellants for amendment of the shipping bill was denied solely on the ground that the appellants did not submit any documentary evidence available at the time of export to substantiate their claim for amendment of the shipping bill.

6. The provisions for amendment of documents are contained in Section 149 *ibid.* It has been mandated that the proper officer may, in his discretion, authorize any document, after it has been presented in the Customs House to be amended. The *proviso* clause appended to Section 149 *ibid* provides that no amendment of a shipping bill shall be authorized to be amended after the goods have been exported, except on the basis of documentary evidence which was in existence at the time the goods were cleared. Reading of the said statutory provision makes the position clear that the proper officer may consider amendment of the shipping bill in respect of the goods already exported, only

upon satisfying about the fact that the documentary evidence in respect of the export was in existence. In the present case, though the appellants have claimed that the provisions of Section 149 *ibid* have been duly complied by them, but the request letter for amendment of the shipping bill was turned down by the authorities on the ground that no documents were submitted to demonstrate that such amendment merits consideration in respect of the exports already made. Thus, under such circumstances, we are of the considered view that the lower authority should properly examine the documentary evidence submitted by the appellants for proper appreciation of the fact regarding amendment of the shipping bill.

7. Further, Section 154 *ibid* provides for the mechanism of correction of clerical errors, etc. in any decision or order passed by the officer of customs. In the case in hand, though the appellants had claimed that due to typographical error, the shipping bill has wrongly claimed the duty Drawback under Sr. No. 98.01, but the available documents, including the email correspondences proved the fact that the correct classification reference should be under Entry 84.11.82.20. However, we find that with regard to the prayer made for correction of such error or mistake had not been addressed by the authorities below.

8. In view of the foregoing discussions, we are of the opinion that the matter should go back to the original authority to properly examine the issue, whether the documents based on which the amendment is sought for by the appellants were present at the time of exportation of the subject goods or arranged subsequently by them for obtaining the benefit of Drawback.

9. Therefore, the impugned order is set aside and the appeal is allowed by way of remand to the original authority for *de novo* adjudication of the matter, in line with our above observations. Needless to say that reasonable opportunity of personal hearing should be granted to the appellant for submission of

documentary evidence and thereafter, for passing of the reasoned and speaking order on the basis of the evidences available in the case file.

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

(Order pronounced in the open court on 29.05.2023)

(C J MATHEW)
Member (Technical)

(S.K. MOHANTY)
Member (Judicial)

Sm