CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPLICATION (EH) NO: 86186 OF 2023
(on behalf of appellant)
IN
CUSTOMS APPEAL NO: 87439 OF 2023

[Arising out of Order-in-Appeal No: 313 (Gr.V)/2023(JNCH)/Appeals dated 16th March 2023 passed by the Commissioner of Customs (Appeals), Mumbai – I.]

Oki India Pvt Ltd
A09 Art Guild House, Phoenix Market City
LBS Road, Kurla (W), Mumbai - 400070 … ***Appellant***

versus

Commissioner of Customs (NS-V)
Jawaharlal Nehru Customs House, Nhava Sheva,
Tal: Uran, Dist Raigad, Mumbai 400707 ***…Respondent***

APPEARANCE:

Shri Sanjeev Nair, Advocate for the appellant

Shri Ram Kumar, Assistant Commissioner (AR) for the respondent

CORAM:

HON’BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON’BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 87196/2023

DATE OF HEARING: 28/11/2023
DATE OF DECISION: 28/11/2023

PER: C J MATHEW

In this application, several reasons were adduced to urge early hearing of appeal against order[1] of Commissioner of Customs (Appeals), Mumbai – II; however, the principal one appears to be that entitlement for benefit of exemption afforded by alternative notification which, in terms of the decision of the Hon'ble Supreme Court in *Share Medical Care v. Union of India [2007 (2) TMI 2 – SUPREME COURT]*, should have been considered was discarded by the first appellate authority.

2. We have heard Learned Counsel for appellant and Learned Authorised Representative.

3. Considering the submission made, we allow this application, and, in view of the limited issue before us, we are also inclined to take up the appeal itself for disposal; with the consent of both sides, we do so.

4. The appellant, M/s Oki India Pvt Ltd, is one among the half dozen importers of equipment that is widely used in the banking industry for dispensing of currency notes and, in importing the goods against bill of entry no. 7844805/12.03.2022, had sought clearance at 'nil' rate of duty, applicable to goods corresponding to tariff item 8472 9030 of First Schedule to Customs Tariff Act, 1975 read with notification no. 12/2012-Cus dated 17th March 2012 for the period up to 29th June 2017 and with notification no. 50/2017-Cus dated 30th

[1] [order-in-appeal no. 313 (Gr.V)/2023(JNCH)/Appeals dated 16th March 2023]

June 2017 for the period thereafter. In the impugned bill of entry, the goods were described as ‘ATM – Recycler – G8 Automatic banknote deposit & dispense machine’; however, with the finding that the equipment is capable of other functions, the adjudicating authority undertook reclassification holding the goods to be more in conformity with description corresponding to tariff item 8472 9099 of First Schedule to Customs Tariff Act, 1975. Before the first appellate authority, appellant herein had, in addition to arguments on merits, also pleaded entitlement to the benefit of notification no. 25/2005-Cus dated 1st March 2005 as alternative. Though the first appellate authority did acknowledge eligibility for exemption thereby, the claim for exemption was denied solely owing to not having been sought for at the time of assessment.

5. We have heard Learned Counsel for appellant and Learned Authorised Representative at length.

6. The sole issue appears to be the denial of entitlement to benefit of alternative notification which, in accordance with the decision of the Hon’ble Supreme Court in *re Share Medical Care,* should have been considered in proceedings emanating from denial of notification originally sought for even if not claimed in bill of entry. It appears that disinclination on the part of the first appellate authority is attributable to such not having been claimed at the time of import. Section 149 of

Customs Act, 1962 provides for amendment to bill of entry upon application being sought from the competent authority prescribed therein which, however, was not exercisable by the importer of the impugned goods until the claimed notification was clearly held as non-applicable. That was intimated statutorily only on conclusion of adjudication proceedings and was, thus, an option only at stage of first appeal. The ostensible eligibility of the appellant for benefit of notification no. 25/2005-Cus dated 1st March 2005 has been set out in the impugned order, and, in such circumstances, should have been left to the competent authority to dispose off such plea considering it to be exercise of such option available in section 149 of Customs Act, 1962. It is for the original authority to take a decision on the eligibility for such claim and, to decide the matter afresh, we set aside the impugned order directing that duty liability, and other attendant consequence, if any, be determined by the original authority.

7. Application is disposed off and the appeal is, accordingly, disposed off too.

(Operative Part of the Order pronounced in the open court on 28th November 2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*