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

Customs EH Application No. 85762 of 2023

in

Customs Appeal No. 86876 of 2022

(Arising out of Order-in-Appeal No. MUM-CUS-KV-EXP-149/2021-22 NCH dated 31st January 2022 passed by the Commissioner of Customs (Appeals), Mumbai I)

M/s. Skoda Auto Volkswagen India Pvt Ltd …..Appellant
E-1, MIDC Indl Area, Phase III
Village Nigoje Mahalunge
Kharabwadi Chakan Taluka, Khed, Pune

Vs.

Commissioner of Customs, Mumbai Export I …..Respondent
New Custom House, S V Road,
Ballard Estate, Mumbai

APPEARANCE:

Shri Anay Banhatti, Advocate for the appellant
Shri Ranjan Kumar, AC (AR) for the respondent

CORAM: **Hon'ble Mr C J Mathew, Member (Technical)**
Hon'ble Mr Ajay Sharma, Member (Judicial)

FINAL ORDER No: A/87209/2023

DATE OF HEARING: 05-12-2023
DATE OF DECISION : 05-12-2023

Per: Coram

This application seeks 'out of turn' disposal of appeal no. C/86876/2022 challenging order-in-appeal no. MUM-CUS-KV-EXP-

149/2021-22 NCH dated 31st January 2022 of Commissioner of Customs (Appeals), Mumbai I.

2. Learned Counsel for applicant drew our attention to several grounds, including the circumstances in which the appeal was carried to the Tribunal, and intimated that the proceedings before the Government of India in revisionary jurisdiction, emanating from their application for fixation of 'brand rate' that was allowed provisionally but sought to be withdrawn subsequently, owing to pendency of their application for amendment under section 149 of Customs Act, 1962, that after confirmation by original authority and first appellate authority, was in jeopardy owing to pendency of the present appeal. He further submitted that, in rejecting their application and while upholding of the rejection in appeal, the lower authorities had not considered judicial decisions that may have altered the course of proceedings .

3. We have heard learned Authorised Representative.

4. Considering the submissions, we allow the application and, further considering the limited issue before us, we are inclined to take up the appeal itself for disposal. With consent of both sides, we do so.

5. Learned Counsel submitted that appellant had effected exports between April 2016 and September 2016 and, not satisfied with the sufficiency of drawback schedule, had sought fixation of 'brand rate'

which came into effect provisionally but thereafter, and upon ascertainment of declaration in the impugned shipping bills which remained unaltered despite their application for necessary amendments, was sought to be recovered under rule 16 of Customs and Central Excise Duties and Service Tax Drawback Rules, 1995. He contended that decisions, upholding recourse to amendment of shipping bills in similar circumstances, cited by them had not been considered by the lower authorities.

6. We have heard Learned Authorised Representative.

7. Considering that the precedent decisions, claimed by the appellant to settle entitlement to amendment dispute under section 149 of Customs Act, 1962 in their favour, it is appropriate that the application be reconsidered in the light of those decisions. Accordingly, we set aside the impugned order and restore the application under section 149 of Customs Act, 1962 before the original authority for consideration of the submissions of the appellant herein.

8. The application and appeal are accordingly disposed off.

(Dictated and pronounced in open Court)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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