CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Customs Appeal No. 87788 Of 2013

(Arising out of Order-in-Appeal No. 258/MCH/AC/CRSE/2013 dated 05.04.2013 passed by Commissioner of Customs (Appeals), Mumbai Zone-I)

M/s. Executive Trading Co. Pvt. Ltd. **.....Appellant**
G-1, Ashirwad, Ahmedabad Street,
Carnac Bunder, Mumbai-400 009.

VERSUS

Commissioner of Customs (Export Promotion), Mumbai **.....Respondent**
New Customs House, Ballard Estate,
Mumbai-400 001.

Appearance:

Shri Vinay Ansurkar, Advocate for the Appellant
Shri S.K. Hatangadi, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87452/2023

Date of Hearing: 19.12.2023
Date of Decision: 19.12.2023

PER : S. K. MOHANTY

Briefly stated, the facts of the case are that the appellant herein had imported Hot Rolled Coils and filed the Bill of Entry before the Jurisdictional Customs Authorities for assessment. The appellant had also paid 4% Additional Duty of Customs (SAD) under sub-section (5) of Section 3 of the Customs Tariff Act, 1975. Subsequent to payment of duty and clearance of the imported consignment, the appellant had filed the refund application before the Jurisdictional Customs Authorities, claiming refund of SAD amount in terms of Notification No.102/2007-Customs dated 14.09.2007. The refund application filed by the appellant was favourably considered by the original authority and an amount of Rs.1,24,44,718/- was sanctioned to the appellant vide order dated 07.02.2012. The said original order passed by the department was reviewed by the competent authority and as per directions, the department had filed appeal before the Learned Commissioner (Appeals) against the said original order dated 07.02.2012. The appeal filed by the department was allowed and the original order dated 07.02.2012 was set aside. Subsequent to sanction of the refund amount, the department had initiated enquiry proceedings against the appellant and also recorded the statement from the Director and issued the show cause notice dated 06.07.2012, on the ground that the refund sanctioned and paid to the appellant is erroneous and accordingly, the same is recoverable under Section 28 of the Customs Act, 1962.

2. The appellant has assailed the impugned order dated 05.04.2013 on the ground that the relied upon documents were not submitted by the department. In this regard, the appellant has also placed on record the letter dated 25.07.2012 stating that they had specifically asked for the relevant documents, which were not submitted by the department. Thus, the appellant has prayed for setting aside the appeal on the ground of violation of principles of natural justice.

3. Heard both sides and examined the case records.

4. On perusal of the case records, more specifically the show cause notice dated 06.07.2012, we find that the department has not submitted the copies of the relied upon documents to the appellant. Further, we also find that though the appellant had specifically prayed for copies of the relied upon documents for effective preparation of the reply to show cause notice, but the requests made by them was also not adhered to by the department. Therefore, we are of the view that there is gross violation of the principles of natural justice. Accordingly, the matter arising out of

the show cause notice dated 06.07.2012 cannot be proceeded further for proper and effective adjudication.

5. In view of the above, we are of the considered opinion that the matter should go back to the original authority for submission of all the relied upon documents to the appellant and thereafter for adjudication of the matter. Therefore, the impugned order is set aside and the matter is remanded back to the original authority for submission of relied upon documents to the appellant and for giving them the opportunity for preparation and filing of the reply to the show cause notice. Needless to say, that opportunity of personal hearing should be granted to the appellant before deciding the issue afresh.

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

(Dictated and pronounced in the open court)

(S.K. Mohanty)
Member(Judicial)

(M.M. Parthiban)
Member (Technical)

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