CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI
REGIONAL BENCH, COURT NO. 1

IN
CUSTOMS APPEAL No.86133 OF 2014

(Arising out of order-in-appeal No.MUM-CUSTOM-AMP-APP-527/13-14 dated 17.01.2014 passed by the Commissioner (Appeals), Mumbai-III,Awas Corporate Point (5th Floor), Makwana Lane, Behind S.M.Centre, Andheri-Kurla Road, Maro, Mumbai-400 059)

HONEYWELL AUTOMATION (I) LTD
Plot No.56 & 57 Hadpsar Industrial Estate,Hadapsar
Pune-411 013
Appellant

Vs.

COMMISSIONER OF CUSTOM (ACC & IMPORT)-MUMBAI
SAHAR, ANDHERI (EAST)
Mumbai-400099
Respondent

Appearance:
Present for the Appellant:Shri Akhilesh Kangasia, Advocate & Ms.Madhura Khandekar, Advocate
Present for the Respondent: Shri K.M.Azad, Asstt.Commissioner (AR)

CORAM:
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO. 85729/2024

Date of Hearing : **21.06.2024**

Date of Decision: **01.2024**

The instant appeal has been filed assailing the Order-in-Appeal dated 17.01.2014 by which the learned Commissioner of Customs (Appeals), Mumbai-III upheld the order of the Assistant Commissioner rejecting the refund filed by the appellant.

2. It is the case of the appellant that Miscellaneous Charges of Rs.64,74,561/- were erroneously included by them in the assessable value in the Bill of Entry No.341625 dated 11.12.2009 for importing "Analog Output Isolator " and it resulted in excess payment of duty of Rs.14,07,511/-. After

realizing the mistake, the appellant vide letter dated 22.01.2010 filed an application seeking refund of excess payment of Customs duty paid by them erroneously. The Assistant Commissioner of Customs vide his order dated 23.03.2011 rejected the claim of the refund by observing that there was no material evidence to verify the authenticity of the claim for refund filed by the Appellant. On appeal filed by the appellant, the learned Commissioner (Appeals) dismissed the same solely on the ground that the claim for refund was filed by the appellant without seeking amendment/re-assessment of bill of entry.

3. Learned Counsel for the appellant submits that the impugned order has been passed by the Commissioner (Appeals) completely on wrong premise without looking into the documents placed on record by the appellant in support of its case. He drew my attention towards the letter dated 16.11.2010 in which they have specifically asked for re-assessment of bill of entry dated 11.12.2009. According to learned Counsel, the said letter regarding re-assessment of bill of entry was placed on record before both the lower authorities but none of them have looked into the said letter (supra) while rejecting the refund claim. He also submits that this Tribunal in the matter of *Calison Fibres Pvt.Ltd. versus Commissioner of Customs (Import), Nhava Sheva-2019 (370) ELT 1097* has held that the assessee's request for re-assessment be treated as application under section 149 of Customs Act, 1962 for amendment of bill of entry. Learned Counsel prays that the impugned order may be set aside and the matter may be remanded back to the

Adjudicating Authority to decide the matter afresh. Per contra learned Authorised Representative reiterated the finding recorded in the impugned order and prayed for dismissal of appeal. In support of his submissions learned Authorised Representative relied upon the decision of the Tribunal in the matter of *CC(Imp.), Nhava Sheva vs. Indian Farmers Fertilizers Co-OP. Ltd.;2009 (237) ELT 570 (Tri.-Mum.).*

4. I have heard learned Counsel appearing for the appellant and learned Authorised Representative appearing on behalf of the Revenue and perused the case record including synopsis and case laws placed on record on behalf of the respective sides. The only grounds on which the learned Commissioner rejected the appeal of the appellant is that the appellant did not ask for re-assessment of bill of entry. But in view of letter dated 16.08.2010 (supra), as pointed by the learned Counsel for the appellant, the aforesaid finding of the learned Commissioner is totally erroneous. The Assistant Commissioner in his order dated 23.03.2011 has not even discussed anything about filing or non filing of amendment/re-assessment of bill of entry. He only mentioned that since the bill of entry was assessed under RMS and the goods already was out of charge, therefore, no refund claim can be entertained. No other discussion has been made by the said authority in its order dated 23.03.2011. This shows the non application of mind by both the authorities below while rejecting the refund claim.

5. In view of submissions of learned Counsel and also in view of peculiar facts of the case as discussed hereinabove, I am of

the view that justice need not only be done but also seen to have been done. Therefore, without going into the merits of the appeal of the appellant, I deem it proper to set aside the impugned order and remand the matter back to the lower authority for a fresh adjudication after taking into consideration all the submissions/documents of the appellant and in particular the re-assessment of bill of entry. The appellant is directed to produce all the documents and case laws before the said authority.

6. Needless to mention that I have not gone into the merits of the matter or the documents relied upon by the learned Counsel, for which lower authority is free to decide in accordance with law.

7. The appeal is therefore allowed by way of remand to the Adjudicating Authority.

(Pronounced in the Court on 01.08.2024)

(AJAY SHARMA)
MEMBER (JUDICIAL)

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