CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

CUSTOMS MISC. APPLICATION No. 85701 of 2023
&
CUSTOMS MISC. APPLICATION No. 85183 of 2024

With

CUSTOMS APPEAL No. 85745 of 2021

(Arising out of Order-in-Appeal No. 20(CEAC)/2021(JNCH)/Appeals dated 23.03.2021 passed by Commissioner of Customs (Appeals), Mumbai-II, JNCH, Nhava Sheva.)

Gulabdas & Company **.....Appellants**
3C, Benefits Business House,
126,Mathuradas Mill Compounds
N.M. Joshi Marg, Lower Parel (West)
Mumbai – 400013.

VERSUS

Commissioner of Customs **.....Respondent**
Jawaharlal Nehru Customs House
Nhava Sheva Commissionerate-II
Nhava Sheva, Taluk Uran, District Raigad
Maharashtra - 400 707.

APPEARANCE:

Shri P.K. Shetty, Advocate for the Appellants
Shri Ranjan Kumar, Authorised 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/86653/2024

Date of Hearing: 05.04.2024
Date of Decision: 05.04.2024

PER : M.M. PARTHIBAN

The Miscellaneous application being No. 85183 of 2024 has been filed by the applicant seeking early hearing of the appeal on the ground that the issue in the present case has already been settled by the various judgements delivered by the higher judicial forum. The applicant has also filed one another miscellaneous application No. 85701 of 2023, to state that on similar matter, various High Courts and Tribunal have passed orders in favour of the appellants to strengthen their case and for praying early hearing of their case. The grounds urged in support of early hearing application and miscellaneous application seems reasonable. Accordingly, in the interest of justice, the early hearing application along with miscellaneous application of additional grounds are allowed. The miscellaneous applications are disposed of accordingly. With the consent of both the parties, the appeal is taken up for hearing and final disposal of the case.

2. This appeal has been filed by M/s Gulabdas & Company, Mumbai (herein after, referred to as 'the appellants'), assailing Order-in-Appeal No. 20(CEAC)/2021(JNCH)/Appeals dated 23.03.2021 (herein after, referred to as 'the impugned order') passed by Commissioner of Customs (Appeals), Mumbai-II, JNCH, Nhava Sheva.

3.1 The facts of the case, leading to this appeal, are summarised herein below:

3.2 The appellants herein, *interalia,* are engaged in the activity of export of 'cotton printed fabrics' through JNCH Customs House, under DFIA Scheme during the year 2013-14. The DGFT had earlier issued 26 DFIA licenses to the appellants based on such exports; however, for the subsequent period, there was delay in getting such DFIA licenses and the appellants had decided to convert the shipping filed under DFIA scheme to be converted into Drawback scheme, and had applied for the same before the Customs authorities. On examination of the request, the original authority vide letter dated 20.11.2019 had rejected their request for amendment under Section 149 of the Customs Act, 1962 on the ground that in those Shipping Bills (S/Bs) for which amendment was sought, the S/Bs have not been registered with the Customs department. Feeling, aggrieved with the above order, the appellants had preferred an appeal before the Commissioner of Customs (Appeals), who had confirmed the order passed by the original authority and rejected the appeal filed by the appellants. Therefore, the appellants have preferred this appeal before the Tribunal.

4. Heard both sides and perused the records of the case.

5. The appellants had filed application covering a total number of 144 S/Bs before the proper officer of Customs requesting for conversion of various shipping bills exported under drawback scheme to be changed into

DFIA shipping bills. In response to the said application, the Assistant Commissioner of Customs vide letter dated 29.11.2019 had allowed the amendment as per Section 149 of the Customs Act, 1962 for part of 136 S/Bs and had also issued necessary certificate of amendment/conversion. However, the said authority rejected the request for amendment with respect eight shipping bills, on the ground that the goods covered under such shipping bills have been exported without proper registration with the Customs authorities.

6. In this regard, we find that the rejection of amendment have been done by the authorities below, without affording an opportunity of personal hearing to explain the grounds on which the appellants have sought such amendment and for consideration of the same in adjudication of the case, before the said application was rejected. Needless to mention that this has resulted in gross violation of principles of natural justice as the appellants did not get an opportunity to explain the reasons mentioned in the application for conversion vis-a-vis the grounds for rejection of the said application. Therefore, we are of the considered opinion that on this ground alone, the impugned order upholding the original order is liable to set aside.

7.1 At this stage, without going into the merits of the application, we set aside the impugned order dated 23.03.2021 which had upheld the decision of the original authority, for rejection of conversion of shipping bills into DFIA shipping bills and remand the matter to the competent authority to reconsider the whole issue afresh, after affording reasonable opportunity of hearing to the appellants.

7.2. In the result, the impugned order dated 23.03.2021 is set aside and the appeal is allowed in favour of the appellants. Appeal is allowed by way of remand to the original authority.

(Operative portion of the order pronounced in Court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha