CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 90049 of 2014

(Arising out of Order-in-Original No. 05/RN/COMMNR/M-II/2014-15dated 27.08.2014 passed by the Commissioner of Central Excise, Mumbai-II)

M/s R. S. Prakash Associates **.... Appellant**
A-8, 9, 119, 120, 121, Ghatkopar Industrial Estate,
LBS Road, Mumbai – 400 086.

Versus

Commissioner of Central Excise, Mumbai – II **.... Respondent**
9th Floor, Piramal Chambers, Jijibhoy Lane, Lalbaug, Parel,
Mumbai – 400 012.

Appearance:

Shri Roshil Nichani, Advocate for the Appellant

Shri C.S. Vinod, 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/86877/2024

Date of Hearing: 12.11.2024

Date of Decision: 12.11.2024

PER: S.K. MOHANTY

The applicant/appellant has filed this miscellaneous application, seeking consideration of the additional documents in context with the appeal filed by them. Since the additional documents submitted by the appellant are in context with exportation of the goods, the prayer made by them is considered and accordingly, such additional documents submitted are taken as a part of this record for consideration of the appeal.

2. Heard both sides and perused the case records.

3. Appellant has assailed the impugned order dated 27.08.2014 passed by the learned Commissioner of Central Excise, Mumbai-II, wherein central excise

duty demand of Rs.82,96,915/- was confirmed alongwith interest and also equal amount of penalty was imposed by him under Section 11AC of the Central Excise Act, 1944 and Rs.5,000/- under Rule 27 of the Central Excise Rules, 2002.

4. The original authority has denied the benefit of export claimed by the appellants for exportation of the footwear to outside the country. The original authority has denied the benefit of export on the ground that the appellants did not submit the documents mainly ARE-1, Letter of Undertakings etc., at the time of adjudication of the matter. Learned Advocate appearing for the appellant submitted that though the copies of ARE-1 and the Letter of Undertakings were not submitted at the time of adjudication of the matter, but all other related documentary evidences to support exportation of the goods, such as shipping bills, mate receipt, bank remittance certificate etc., were produced before the adjudicating authority, which were not considered by him while passing the impugned order.

5. Since the original authority has denied the benefit of export to the appellant on the ground that the copies of ARE-1 and Letter of Undertakings were not submitted, we are of the view that such observations made by him cannot be faulted with, as verification of proper documents is entirely upon the subjective satisfaction of the adjudicating authority. However, we find that the other export documents submitted by the appellant were also not considered and for that, no specific reason were assigned to by the adjudicating authority. Therefore, we are of the view that the matter should go back to the original authority for examination of copies of ARE-1 and Letter of Undertaking to be submitted by the appellants and further, he should also examine the other documents submitted by the appellant for a proper fact findings as to whether, the goods as per the ARE-1 were actually exported by the appellant or otherwise.

6. Therefore the impugned order is set aside and the appeal is allowed by way of remand to the original authority for passing of a fresh adjudication order in line with the observations made herein above. Needless to say, that opportunity of hearing should be provided to the appellant before deciding the matter afresh. In the result, the appeal is allowed by way of remand.

(Dictated and pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha