Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

CUSTOMS Appeal No. 11947 of 2017-DB

[Arising out of Order-in-Original/Appeal No MUN-CUSTM-000-APP-079-094-17-18 dated 30.06.2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

Vids Overseas **...Appellant**
603/604, Samarth Prasad Bldg, Samarth Nagar,
Lokhandwala, Near Four Bunglows, Andheri(W)
MUMBAI
MAHARASHTRA-400053

VERSUS

C.C.-Mundra **...Respondent**
Office of the Principal Commissionerate of Customs, Port User Buld.
Custom House Mundra, Mundra
Kutch
Gujarat-370421

WITH

i. **Customs Appeal No. 11947 of 2017 (Vids Overseas)**
ii. **Customs Appeal No. 11948 of 2017 (Niraj Silk Mills)**
iii. **Customs Appeal No. 11949 of 2017 (Spj International)**
iv. **Customs Appeal No. 11950 of 2017 (Niraj Silk Mills)**
v. **Customs Appeal No. 11951 of 2017 (Niraj Silk Mills)**
vi. **Customs Appeal No. 10193 of 2018 (Wings Overseas Pvt Ltd)**
vii. **Customs Appeal No. 10194 of 2018 (Hanuman Prasad & Sons)**
viii. **Customs Appeal No. 10798 of 2018 (V K Trading Co.)**

APPEARANCE:
Sh. Anil Gidhwani, Advocate for the Appellant
Sh. H. P Shrimali, Superintendent (Authorized representative) for the Respondent

CORAM: HON'BLE MEMBER (TECHNICAL), RAJU
HON'BLE MEMBER (JUDICIAL), SOMESH ARORA

Final Order No. A/ 11161-11168 /2023

DATE OF HEARING:30.05.2023
DATE OF DECISION:30.05.2023

RAJU

These appeals have been filed by M/s. against dismissal of their appeal filed before Commissioner (Appeals).

2. Shri Anil Gidhwani, Learned Counsel for the appellant pointed out that the Commissioner (Appeals) has dismissed their appeals on the ground that the appeals have not been filed by a person authorized under Rule 3 of Customs Appeal Rules, 1982. Learned Counsel argued that this was the defect, the same should have been pointed out that and they have got it corrected and dismissal of their appeal solely on this ground is un-justified. He argued that this is merely a procedural matter and the appeal should not have been dismissed solely on this ground.

3. Learned AR relied on the impugned order. He argued that only people authorized under Rule 3 of Customs Appeal Rules, 1982, can signed the appeal memorandum before the Commissioner (Appeals).

4. We have considered the rival submissions, we find that the appeals have been signed by the Custom House Agent Mr. Bajarang Sharma. The Importers have given authorization to the CHA in the following format in all cases:

Appeal No.462/2016

F. Relief(s) claimed in appeal

In the above premises, the Appellant most respectfully prays as under:

(a) The order of assessment dated 05.10.2016 passed on Bills of Entry as above listed may be quashed and set aside, with consequential relief.

(b) Personal hearing may be granted before deciding the case and;

(c) Any other & further relief as may be deemed fit in the facts and circumstances of the case may also be granted.

For V.K. Trading Co
For V. K. TRADING CO.

Authorised Signatory
Bajrang Sharma

(Signature of the appellant)

Verification

I, Bajrang Sharma, Authorized Signatory of appellant, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today, the 19th day of November, 2016.

Place: Gandhidham

Date: 19.11.2016

For V.K. Trading Co
For V. K. TRADING CO.

Authorised Signatory
Bajrang Sharma

(Signature of the appellant)

Amba Lal Meena
Superintendent
CGST & CX. AR-V
Anjar-Bhachau

It is seen that the Rule 3 of the Customs Appeal Rules, 1982 prescribes as follows:

> *"3. Form of appeal to [Commissioner] (Appeals).-*
>
> *(1) An appeal under sub-section (1) of section 128 to the [Commissioner (Appeals)] shall be made in Form No. C.A-1*
>
> *(2) The grounds of appeal and the form of verification as contained in Form No. CA-1 shall be signed:-*
>
> *(a) in the case of an individual, by the individual himself or where the individual is absent from India by the individual concerned or by some person duly authorised by him in this behalf and where the individual is a minor or is mentally incapacitated from attending to his affairs by hi guardian or by any other person competent to act on his behalf*
>
> *(b) in the case of a Hindu undivided family, by the (b) Karta and, where the Karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family:*
>
> *(e) in the case of a company or local authority, by the principal officer thereof;*
>
> *(d) in the case of a firm, by any partner thereof not being a minor:*
>
> *(e) in the case of any other association, by any member of the association or the principal officer thereof, and*
>
> *(f) in the case of any other person, by that person or some person competent to act on his behalf*
>
> *(3) The form of appeal in Form No. C.A.-I shall be filed in duplicate and shall be accompanied by a copy of the decision or order appealed against."*

5. It is seen that Custom House Agent cannot file appeal under his signature and authorization. Such signature or authorization can be made only if the importer is not in India at the material time and the Custom House Agent or any other person duly authorized for filing appeal in terms of Rule 3 of Customs Appeal Rules, 1982. This deficiency should have been pointed out by the Commissioner (Appeals) to the appellant and the same could have been corrected. This cannot be a ground for rejection of appeal itself. In the interest of justice, we set aside the impugned order and remand the matter back to

the Commissioner (Appeals) to treat this as a defect and offer an opportunity to the appellant to correct the same in terms of Rule 3 of the Custom Appeals Rules, 1982.

6. The matters are remanded back to the Commissioner (Appeals) to provide an opportunity to the appellant to correct this defect. If the defect is corrected then the matters may be decided by Commissioner (Appeals) on merits.

(Dictated & Pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Palak