

Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad
REGIONAL BENCH- COURT NO. 1

CUSTOMS Appeal No. 10814 of 2017-DB

(Arising out of OIA-AHM-CUSTOM-000-APP-085-16-17 dated 30.01.2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

SONY INDIA PVT LTD

A- 31, MOHAN CO-OP. IND. ESTATE,
MATHURA ROAD, NEW DELHI

.....Appellant

VERSUS

COMMISSIONER OF CUSTOMS - AHMEDABADRespondent

CUSTOM HOUSE, NEAR ALL INDIA RADIO
NAVRANGPURA, AHMEDABAD, GUJARAT

APPEARANCE:

Shri Deepak Thackur, Advocate appeared for the Appellant

Shri Anand Kumar, Superintendent (Authorized Representative) for the Respondent

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

Final Order No. A/ 11506 /2023

DATE OF HEARING:11.07.2023

DATE OF DECISION:11.07.2023

SOMESH ARORA

When the matter came up for hearing learned advocate for the appellant pointed out that this is an old matter pertaining to the year April 2015 to July 2015 and in the instant case, the appellants had maintained that the duty was paid under protest and for finalization of assessment had gone in appeal to claim a particular Exemption Notification. Learned Commissioner (Appeals) at the stage of appeal vide his order dated 04.01.2016 observed as follows:

"5. I have carefully gone through the case records and the submissions made in the Memo of Appeals and also submissions at the time of personal hearing.

5.1 Undisputed facts in the case are that all the Bills of Entry in question have been assessed by proper officer as per the details furnished by the appellant; and accordingly appellant has paid applicable duty under protest and cleared the goods.

5.2 Appellant has filed these appeals to get benefit of concessional rate of CVD at 1% on fulfillment the Condition No. 16 of Notification No. 12/2012-CE dated 17.03.2012, as amended, relying on the judgement dated 26.03.2015 of The Hon'ble Supreme Court in the case of M/s SRF Ltd. Vs. Commissioner of Customs, Chennai.

5.3 The appellant vide various letters submitted before the assessing officer claimed the benefit of Sr. No. 263A (ii) of the Notification No. 12/2012 CE dated 17.03.2012. Since they were reportedly not allowed to claim the said benefit while filing Bills of Entry and hence paid duty under protest. They also requested for speaking orders under section 17 (5) of Customs Act 1962.

5.4 I am unable to verify the veracity of the claims made by the appellant at this stage without having any records. Copy of the appeals were served to the assessing authority, however no comments have been received from the appellant.

5.5 I would like to state that this is an exceptional case where the entire sets are not available on record to verify the claim made by the appellant, besides certain mandatory action appears to be necessary at the hands of the original assessing authority, and therefore, I find remitting of the case with suitable directions **for de novo decision, becomes sine qua non to meet the ends of justice.** (emphasis supplied)

5.6 In this regard, I rely upon the case of **Prem Steels P. Ltd. 2012-TIOL 1317 CESTAT DEL** and the case of **Hawkins Cookers Ltd. 2012 (284) ELT. 677 (Tri. Del)**, which have also relied upon the case of **Medico Labs 2004(173) ELT 117 (Guj.)**, wherein it has been held that Commissioner (Appeals) continue to have power of remand even after the amendment of Section 35(A) of the Central Excise Act, 1944 by Finance Wet, 2001 w.e.f 11.05.2001. This case of Prem Steels P. Ltd. has distinguished the decision of Hon'ble Supreme Court in the matter of **MIL India Ltd. 2007 (210) ELT 185 (SC)** and stated that on the question of remand, the Supreme Court only made a passing remark, and relied on the case of Medico Labs (supra) and the decision of Hon'ble Apex Court in their decision in the case of **Umesh Dhaimode-1998 (98) E.L.T. 584 (S.C.)**.

5.7 In the light of the aforesaid facts and circumstances, **I set aside the impugned assessment orders** with a direction to the assessing authority for consideration of all the available facts, documents & provisions of law and to pass suitable orders in adherence of principles of natural justice within 4 weeks time from the date of receipt of this order. I, however, make it clear that while passing this order, I have not expressed any opinion or views on the merits of the dispute or the case laws cited by the appellant in this regard, which shall be independently considered by the assessing authority." (emphasis supplied)

2. He thus set aside the assessment orders with directions to the assessing authority for de novo consideration of all facts, documents and provisions of law and to pass suitable order after following natural justice. Therefore, the assessment orders became non-est and only the direction for de novo adjudication existed. The department never came in appeal against setting aside of the assessment order by the Commissioner (Appeals) vide his order dated 04.01.2016.

Subsequently, we find that the original authority vide its order dated 30.01.2016 instead of doing detailed do novo adjudication as was expected of him in view of the order-in-appeal, treated assessment order which was set aside as still subsisting and passed the following order.

“Para 9. The first appellate authority remanded the case on the ground that this is an exceptional case where the entire facts are not available on record to verify the claim made by the appellant besides certain mandatory action appears to be necessary at the hands of the original assessing authority. The full facts of the case being the above, it does not warrant any modification in the assessment orders issued by this office. Hence, any benefit claimed post completion of each assessment is outside the mandate of assessment which being an adjudication order, the adjudicating authority becomes functus officio. Hence, the remedy lies elsewhere. Therefore, discussing the merits of the submissions made during the PH shall serve no purpose. After considering all the facts, documents and provisions of law, I am of the considered view that this office is not a 'Proper Officer' to revisit any of the aforementioned assessments which are final assessment orders for all legal purpose and therefore, refrain from interfering with these orders.”

2.1 In nutshell, despite direction to do de-novo adjudication, he emphasized his lack of power being not a proper officer to revisit any of the aforementioned assessment which are final assessments for all legal purposes and therefore refrained, from interfering with the assessment orders, which in any case were set aside. This despite there being a judicial duty cast upon him to pass de novo order in all the matters where assessment are under challenge. We further find that in appeal in second round to the appellate authority an order was passed dated 30.01.2017 and Commissioner (Appeals) not realizing that the first appellate authority had already set aside assessment orders and had directed passing of a de novo order after following natural justice, endorsed the view of original authority and rather gave his reasoning as to why self assessment cannot be reopened vide para 7 to 8 of his order reproduced below:

“Para 7. While introducing self-assessment mechanism, the provisions of Section 17 of the Customs Act, 1962 were amended by Finance Bill of 2011. The amended text of Section 17 reads as under:-

SECTION 17. Assessment of duty. (1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, **shall**, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

(2) **The proper officer may verify** the self-assessment of such goods and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

(3) For verification of self-assessment under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any contract, broker's note insurance policy, catalogue or other document, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained, and to furnish any information required for such ascertainment which is in his power to produce or furnish, and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods

(5) Where any re-assessment done under sub-section (4) is contrary to the self- assessment 25 done by the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued therefore under this Act and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be

Therefore the importer shall self-assess the duty, if any, leviable on such goods and the proper officer **may** only **verify** the **self assessment done by the importer**.

The provisions of filing appeal before Commissioner (Appeals) are as under:-

SECTION 128. Appeals to Commissioner (Appeals).- (1) Any person **aggrieved** by any **decision or order** passed under this Act **by an officer** of customs lower in rank than a Commissioner of Customs may appeal to the Commissioner (Appeals) within sixty days from the date of the communication to hit of such decision or order.

Following ingredients should be present in a case in order to be eligible for the appellate remedy under Section 128:-

- (1) Person should be **Aggrieved**;
- (ii) There should be an **order/decision**
- (iii) Such order/decision should be **passed by an officer** lower in rank than Commissioner (Appeal)

Now in case of self-assessed bill of entry, the proper officer may only verify the bill of entry which is self-assessed by the importer. Moreover, since the self-assessment has been done by the importer only, the self-assessed bill of entry cannot be considered as an order / decision of the officer and there cannot be any question of the importer being aggrieved against the officer. Hence, I find that the order passed by the lower authority is legal and proper. The appellant has relied on many case laws, which I don't find applicable in the instant case. In view of the above, I find that the appeal doesn't satisfy the criteria laid down in Section 128. In view of the above, I pass the following order:

ORDER

8. I uphold the order of the lower authority and reject the appeal filed by M/s. Sony India Limited.”

2.1 In short, the Commissioner (Appeals) in second round not realizing that his predecessor has already set aside self assessment order which finding has remained uncontested till date by the department, gave life to such self assessment orders and again stated that the appellant cannot be a person aggrieved by the self assessment order which in any case were NON EST after the first appellate order was passed. The learned advocate for the appellants seeks to rely on the following two decisions to indicate that self assessment is also an assessment and appellable like any other assessment order for the purposes of indicating that in any case it was even the self assessment order could be challenged.

- ITC Ltd. 2019 (17) SCC 46
 - MK Woods India (P) Ltd. Customs Appeal No. 11277 of 2016 (decision dated 11.05.2023)
3. Learned Authorized Representative confronted with the situation reiterates the order of the lower authorities.
 4. Considered.

5. We find that in the first round of litigation, an assessment was made by the party and the assessment order were duly approved by the departmental officers and duty was paid under protest. The so-termed self assessment order were set aside by the learned Commissioner(Appeals) to require original authority to issue a fresh order as there was lack of cooperation by the department in providing all the relevant documents. The original authority also had the same predicament of not having the relevant records but overlooked that the self assessment orders were in any case set aside, continued to proceed and concluded that he is not competent, not being a proper officer to reopen the same. This is in complete defiance of order of Ist appellate authority. On appeal to the Commissioner (Appeals), in the second stage he also expressed opinion in his findings that a person has to be aggrieved by self assessment to litigate the matter further. We find that even this proposition is no more valid in view of the judgment cited by the learned Advocate indicating the self assessment is an assessment like any other and any person (including person doing self-assessment) aggrieved can come up for appeal against the same. At this belated stage where the documents are not available with the department and this thing has been repeatedly coming on record and that the duty was paid under protest, we are inclined to give relief to the party and remand the matter to Commissioner (Appeals) to allow the benefit of the Notification sought by the party after due examination of the same, as per law specially provisions of Section 149.

(Dictated and Pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

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