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

REGIONAL BENCH- COURT NO. 1

Customs Appeal No. 10537 of 2019
(Arising out of OIA-MUN-CUSTM-000-APP-276-277-18-19 Dated- 31/12/2018 Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

Universal Trading **........Appellant**
6520, Bara Hindu Rao
Delhi

VERSUS

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

WITH

Customs Appeal No. 10538 of 2019
(Arising out of OIA-MUN-CUSTM-000-APP-276-277-18-19 Dated- 31/12/2018 Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

Universal Trading **........Appellant**
6520, Bara Hindu Rao
Delhi

VERSUS

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

APPEARANCE:
Shri. Sudhanshu Bissa, Advocate for the Appellant
Shri. Sanjay Kumar, Superintendent (AR) for the Respondent

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

Final Order No. A/ 11762-11763 /2023

DATE OF HEARING:22.08.2023
DATE OF DECISION:22.08.2023

RAJU

This appeal has been filed by the appellant challenging the order of Commissioner (appeals).

2. Learned counsel for the appellant pointed out that the Commissioner (Appeals) has not given any finding on the Cross objection filed by the appellant. He relied on Section 129D (4) and Section129A (4) to assert that they had the option of filing cross objection before Commissioner (Appeals).

However, Commissioner (Appeals) has ignored the cross objection filed by the appellant. Learned Counsel relies on the decision of Tribunal in the case of UNIVERSAL PETROCHEMICALS VS CC, MUMBAI-2017 (358) ELT 969 (Tri.-Mum.) and in the case of SOUTHERN AUTO PRODUCTS VS. CCE Bangalore-2009 (248) ELT 513) (Tri-Kolkata).

2.1 In all this decisions, he argues that it has been held that the appellant have right to file cross objection before Commissioner (Appeals) as well. Learned counsel seeks to demand in the case to enable Commissioner (appeals) to deal with the cross objection filed by the appellant.

3. Learned AR relies on the impugned order.

4. We have considered the rival submissions. We find that law is fairly clear on the subject. Section 129D(4) and Section 129A(4) of Customs Act, 1962 reads as follows:

> *"129D (4) Where in pursuance of an order under sub-section (1) or sub section (2), the adjudicating authority or any officer of customs authorised in this behalf by the [Principal Commissioner of Customs or Commissioner or Customs] makes and application to the Appellant Tribunal or the [Commissioner (appeals)] within a period of 9one month] from the date of communication of the order under sub-section (1) or sub-section (2) to the adjudicating authority, such application shall be heard by the Appellant Tribunal or the [Commissioner (Appeals)], as the case may be, as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Act regarding appeals, including the provisions of sub-section (4) of section 129A shall , so far as may be , apply to such application."*
>
> *"129A(4) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections verified in such manner as may be specified by rules made in this behalf against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3)."*

4.1 The above provisions have been examined in the case of UNIVERSAL PETROCHEMICALS LTD VS. COMMER. OF CUS. (IMPORT), MUMBAI-2017 (358) E.L.T. 969 (Tri.- Mumbai). Following has been observed as follows:-

> ***5.****I have considered the argument presented before me. I find that para 5 of the order dated 22-3-2017 proceeds on the basis that the appellants did not have facility to file cross-objection before the Commissioner*

(Appeals) in the instant case. However, it is noticed that Section 129D(4) read with Section 129A(4) clearly prescribes that in case of appeal filed under Section 129D(2), the assessee can file cross-objection and the same have to be dealt with as if it was an appeal presented within the time. As a consequence it is apparent that an error has crept in the order, therefore para 5 of the said decision needs to be removed from the order and replaced with the following :-

> *"5. I have considered the rival submissions. The main contention of the appellants is that the grounds raised in the cross-objection were not examined by the Commissioner (Appeals) and consequently no relief has been granted. I find that in terms of Section 129D(4) read with Section 129A(4) in all cases where the order of authorities lower than Commissioner are reviewed under Section 129D(2), it is open to the aggrieved party to file cross-objection and the same has to be dealt with as if it was an appeal presented within time. Since the Commissioner (Appeals) has failed to consider this ground, the impugned order is set aside and the matter is remanded to the Commissioner (Appeals) to decide afresh after considering the argument raised by the appellants in the cross-objection."*

4.2 In view of the above, we find that the impugned order cannot be sustained. The impugned order is set aside and the matter remanded to Commissioner (Appeals) to give findings both on the appeals filed by the revenue as well as the cross objection filed by the appellants.

5. Appeals are allowed by way of remand.

(Dictated and Pronounced in the open court)

RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

PRACHI