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

REGIONAL BENCH- COURT NO.3

Customs Appeal No.191 of 2011

(Arising out of OIA-10/2011/CUS/COMMR-A-/KDL dated 13/01/2011 passed by Commissioner of CUSTOMS-KANDLA)

Krishna Petrochemicals **.........Appellant**
207/301, Samaan-Ii, Nr. Reliance Petrol Pump,
Nr, Anandnagar Cross Road, Ramdev Nagar,
Ahmedabad, Gujarat

VERSUS

C.C.-Kandla **.........Respondent**
Custom House,
Near Balaji Temple,
Kandla, Gujarat

APPEARANCE:
Shri. Sarju Mehta, Chartered Accountant for the Appellant
Shri. R.K Bhashkar, Superintendent (AR) for the Respondent

CORAM: **HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR**
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 12304 /2021

DATE OF HEARING: 04.08.2021
DATE OF DECISION: 11.08.2021

RAMESH NAIR

This appeal was filed against Order-In-Original which was passed against speaking order of Assistant Commissioner Customs House Kandla. The brief facts of the case are that the appellant have filed a Bill of Entry No 287057 dated 01.05.2009 for home consumption at Customs House Kandla declaring the imported goods as 59.40MT of Mix Hydrocarbon Oil classified under CTH 27101990 as the declared price of Mix Hydrocarbon Oil as per invoice C&F 265 USD per MT appeared to be very low as compared to contemporaneous import prices of Mix Hydrocarbon Oil by other importers from the same country of origin, the appellant was intimated through their CHA to substantiate the declared value. The appellant submitted a letter dated 26.05.2009 to the Adjudicating Authority explaining that the declared price was correct and requested for the reasons for rejecting the declared value. After granting personal hearing on 11.05.2009 an OIO No KDL/ASST/COMMR/GARE/1222/Gr.I/2009 dated 15.06.2009 was issued in terms of section 17(5) of the act by the Assistant Commissioner (Gr-I) Customs House Kandla and based on the findings recorded there in the declared value of USD 265 Per MT was rejected under Rule 12 of Customs Valuation Rules, 2007 and the imported Mix Hydrocarbon Oil vide Bill of Entry No 287057 dated 01.05.2009 was order to be assessed at USD 425 Per MT Under rule 5 of Customs Valuation, 2007 read with section 14(1) of the Customs Act,1962. Accordingly, the Bill of Entry was assessed at enhanced value and the good were given out of charge.

1.2 However, the appellant as if no knowledge of the speaking order filed an appeal before the Commissioner (Appeals) Kandla which was registered as Appeal No S/49-282/CUS/KDL/2010 against the assessment of Bill of Entry No 287057 dated 01.05.2009. The Commissioner(Appeals) without going into the merit of assessment dismissed the appeal as non maintainable vide OIA No 68/2010/CUS/COMMR(A)/KDL dated 04.03.2010 on the ground that the appellant have not challenged OIO dated 15.06.2009 by way of an appeal under section 128 of Customs Act.

1.3 Subsequently the appellant filed an appeal before Commissioner (Appeals) which was registered as Appeal No S/49-282/CUS/KDL/2010. This appeal was dismissed vide the impugned order on the ground of delay in filing the appeal before him and also on the ground that against the earlier OIA No 68/2010/CUS/COMMR(A)/KDL dated 04.03.2010 the appellant have filed an appeal before CESTAT and he held that it is not proper to entertain the present matter and to adjudicate upon the dispute as parallel remedies in the subject matter cannot be persuaded at the same time before two authorities. Therefore the Present Appeal was filed by the appellant.

2. Shri Sarju Mehta, Learned Chartered Accountant appearing on behalf of the appellant submits that firstly, the Appellant have not filed any appeal against the earlier OIA dated 04.03.2010 before CESTAT. Therefore, the ground on this point for dismissing the appeal is absolutely incorrect and illegal. He further submits that as regard the dismissal of appeal on the ground of time bar, no proper opportunity was given to explain the delay. The appellant have not received the OIO for the same which was delivered to CHA. He submits that it is mandatory to serve the order to the person against whom the order was passed. Therefore, the limitation cannot be computed from the date of delivery of order to the CHA. He further submits that the Commissioner (Appeals) has not decided the appeal on merit Therefore, the merits needs to be considered.

3. Shri R.K Bhashkar, Learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order. He submits that the Learned Commissioner (Appeals) has decided the matter in the appeal filed by the appellant against the assessment of Bill of Entry. Therefore, now nothing survives and the appellant cannot agitate the matter again without filing of appeal against the Commissioner (Appeals) order. He also concedes that no appeal is pending before the tribunal against the order dated 04.03.2010. Therefore, observation made by Learned Commissioner (Appeals) in the order dated 04.03.2010 has attained finality.

4. We have carefully considered the submission made by both the sides and perused the record. We find that as regard the earlier order dated 04.03.2010 the appellant had filed the appeal against the assessment of Bill of Entry. In the said OIA though some observation was made by the Learned Commissioner (Appeals) but he has dismissed the appeal in his concluding para 6.5 which is reproduced below:

> "In this view of the matter, without going into the merit of the impugned assessment, I reject the grounds being contented in the present appeal being factually incorrect and further hold that the subject appeal against the assessment of bill of entry No 287057 dated 01.05.2009 is not maintainable in the absence of any challenge to the Order-In-Original dated 15.06.2009 by way of an appeal filed under section 128 of the Act. Consequent to these findings emerging from the facts and circumstances of the present case, the subject appeal filed against the impugned assessment of bill of entry No 287057 dated 01.05.2009 is dismissed as non maintainable"

4.1 From the above order dated 04.03.2010 of the Commissioner (Appeals) it is clear that the learned Commissioner (Appeals) has not considered the merit of the assessment and dismissed the appeal as not maintainable. Once the appeal was dismissed as non maintainable no issue on merit stood decided. The present appeal was filed against the impugned order which was passed in the appeal filed against the OIO. Therefore, the appeal before the Commissioner (Appeals) was filed under legitimate right of the appellant.

In this position we are of the view that the earlier order dated 04.03.2010 and observation made there will not influence the present proceeding. It is also a fact that the appellant has not filed any appeal before the CESTAT against the Commissioner (Appeals) order dated 04.03.2010 therefore, finding of the Commissioner (Appeals) in the impugned order on this point is baseless.

5. As regard time limitation is concerned we find that the appellant was not given proper opportunity to explain the delay in filing an appeal. Accordingly, we set aside then impugned order and direct the Commissioner (Appeals) to decide the issue of valuation as well as delay afresh, after giving opportunity to the appellant.

6. Accordingly, the appeal is allowed by way of remand to the commissioner (Appeals).

(Pronounced in the open court on 11.08.2021)

(RAMESH NAIR)
MEMBER(JUDICIAL)

(RAJU)
MEMBER(TECHNICAL)

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