CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 2

CUSTOMS Appeal No. 11746 of 2017-SM

[Arising out of Order-in-Appeal No JMN-CUSTM-000-APP-138-148-15-16 dated 30.12.2015 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

Ashwin Corporation **.... Appellant**
D-265, Kaliyabid, Ramnagar,
BHAVNAGAR, GUJARAT -364002

VERSUS

Commissioner of Customs, Jamnagar (Prev) **.... Respondent**
SHARDA HOUSE, BEDI BANDAR ROAD,
OPP. PANCHAVATI, JAMNAGAR
GUJARAT

AND

CUSTOMS Appeal No. 11749 of 2017-SM

[Arising out of Order-in-Appeal No JMN-CUSTM-000-APP-138-148-15-16 dated 30.12.2015 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

Ashwin Corporation **.... Appellant**
Plot No. 77, Ship Breaking Yard, Alang, Taluka- Talaja,
BHAVNAGAR, GUJARAT

VERSUS

Commissioner of Customs, Jamnagar (Prev) **.... Respondent**
Sharda House, Bedi Bandar Road,
Opp. Panchavati, Jamnagar, Gujarat

APPEARANCE :

Shri Rahul Gajera, Advocate for the Appellant
Shri Himanshu Nachane, Superintendent (AR) for the Revenue.

CORAM:

HON'BLE DR. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

DATE OF HEARING/ DECISION: 06.04.2026

FINAL ORDER NO. 10292-10293/2026

DR. AJAYA KRISHNA VISHVESHA :

Learned Counsel for the appellant Shri Rahul Gajera and learned AR for the Revenue Shri Himanshu Nachane, Superintendent are present. I have heard the arguments from both the sides.

2. Learned Counsel for the appellant Shri Rahul Gajera submitted that the appellant filed Bill of Entry No. SBY/140/2013-14 dated 26.09.2013 for the vessel MVH Hasan Turan for demolition. The appellant paid total duty of Rs. 1,84,08.860/- vide TR 6 Challan classifying the goods fuel oil (HSD) under Chapter Heading 27 of Customs Tariff Act, 1975 instead of Chapter Heading 8908 of the Customs Tariff Act, 1975 and filed refund application of Rs. 1,36,024/- relying on the CBEC Circular No. 37/1996-Cus dated 03.07.1996 and judgment of Hon'ble Gujarat High Court in **Priya Holding Pvt. Limited** vs. **CC (P) Jamnagar –** 2013 (288) ELT 347 (Guj.). The Assistant Commissioner returned the refund claim stating that Bill of Entry has been finally assessed and has attained finality. On appeal before learned Commissioner (Appeals), the learned Commissioner (Appeals) set-aside the impugned order and remanded the matter to the lower authority for final assessment. He directed to consider the facts in details, issue Show Cause Notice and thereafter pass a speaking order following the principles of natural justice.

3. The learned Assistant Commissioner, contrary to the directions of learned Commissioner (Appeals) proceeded to issue Show Cause Notice entirely on different issue i.e. refund claim was time barred under Section 27

of the Customs Act, 1962 since the duty was paid on 27.09.2013 and the refund claim was filed after one year. The Adjudicating Authority rejected the refund claim. The learned Commissioner (Appeals) rejected the appeal against the Order-in-Original therefore, the appellant filed the present appeal before this Tribunal.

4. The learned Counsel for the appellant submitted that he is not challenging the order passed on the refund application. He has attracted my attention towards the letter dated 11.03.2014 in the appeal paper book in which it has been mentioned that Bill of Entry No. SBY/140/2013-14 dated 26.09.2013 was assessed provisionally for want of original documents. Since the required documents have been produced the said Bill of Entry had been assessed finally on 11.03.2014 to the Customs duty to the tune of Rs. 1,84,08,860/- and the finally assessed duty is adjusted towards the duty already paid at the time of provisional assessment. Further, the provisional assessment bond executed for the captioned vessel is hereby discharged. The learned Counsel for the appellant submitted that principles of natural justice have not been followed and no opportunity of hearing was given to them. The department has not complied with the provisions of Section 17(5) of the Customs Act, 1962 and therefore, the order of final assessment was bad in law.

5. Learned Counsel for the appellant relied upon the order passed by CESTAT Hyderabad in **T.R.L. Krosaki Refractories Limited** vs. **Commissioner of Customs & Service Tax, Visakhapatnam** – 2020 (371) ELT 569 (Tri. Hyd.) in which the Tribunal has, while citing the ratio of

the judgment of the Apex Court in the case of **ITC Limited**, held that if appellant's Bills of Entry have been reassessed and they sought speaking orders which have not been issued to them and the request for issue of speaking orders is rejected by the lower authority that itself becomes a decision by the lower authority which can be appealed against before the Commissioner (Appeals). However, by not issuing the speaking orders or giving any reply to their requests for speaking order, the officer has denied the appellant their legitimate right to challenge the reassessments. In the interest of justice, I find this a fit case to exercise my powers under Rule 41 of the CESTAT (Procedure) Rules, 1982 and direct the assessing officer to issue speaking orders as sought by the appellant in cases where the Bills of Entry were reassessed. This will enable the appellants to understand the reasons for reassessment and if aggrieved, challenge such reassessment. The impugned order is upheld and the appeal is rejected. The reassessing officer who reassessed the Bills of Entry must issue speaking orders within four weeks.

6. Learned AR reiterated the impugned order passed by learned Commissioner (Appeals). He has also submitted that if the Tribunal remand the matter to the lower authority for complying with the principles of natural justice, he has no objection.

7. Consequently, in view of the above observations, the appeals are allowed by way of remand to the Adjudicating Authority. Learned Assistant Commissioner of concerned jurisdiction is directed to pass a speaking order regarding final assessment after following the principles of natural justice

and by giving reasonable opportunity of being heard to the appellant. The learned Assistant Commissioner shall pass the order within four weeks from the date of receipt of this order.

Appeals are allowed by way of remand

(Order dictated and pronounced in the open court)

(Dr. Ajaya Krishna Vishvesha)
Member (Judicial)

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