CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 1713 of 2010

(Arising out of Order-in-Appeal No. 89/2010 dt. 30/04/2010 passed by Commissioner of Customs (Appeals), Bangalore)

Commissioner of Customs, CR Building, Queens Road, Bangalore.	Appellant(s)

VERSUS

Easun Reyrolle India Pvt. Ltd. Plot No.98, Sipcot Industrial Complex, Hosur, Tamilnadu.	Respondent(s)

AND

Customs Appeal No. 545 of 2012

(Arising out of Order-in-Appeal No. 192-224/2011 dt. 08/12/2011 passed by Commissioner of Customs (Appeals), Bangalore)

Easun Reyrolle India Pvt. Ltd. Temple Tower, 6th Floor, Annasalai, Chennai. Tamilnadu.	Appellant(s)

VERSUS

Commissioner of Customs, CR Building, Queens Road, Bangalore.	Respondent(s)

APPEARANCE:

None for the assessee.

Shri K.A. Jathin, Deputy Commissioner(AR) for the Revenue.

CORAM:
HON'BLE Dr. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE Mrs. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20549-20550 / 2023

Date of Hearing: 01/06/2023
Date of Decision: 01/06/2023

Per : DR. D.M.MISRA

These two appeals have been filed, one by the Revenue and other by the assessee. Even though separate orders passed, since the issue involved is common, the appeals are taken up together for disposal.

2. None present for the assessee despite notice. The notices sent to the address of the assessee were not delivered on both occasions i.e. 27/03/2023 and 17/05/2023. From the records, it is found that the counsel appearing for the assessee withdrew his Vakalatnama. Hence, further adjournment to the assessee-appellant would not yield any fruitful result; hence both the appeals are taken up together for disposal with the consent of learned AR for the Revenue.

3. Briefly stated the facts of the case are that the assessee has filed Bills of Entry from time to time for clearance of their product "Relays" claiming the benefit of

exemption Notification No.21/2002-Cus dt. 31/03/2002 (Sl.No.244 List 26). In one of the appeals, the learned Commissioner(Appeals) vide his Order-in-Appeal No.89/2010 dt. 30/04/2010 held in favour of the assessee by setting aside the assessment order directing re-assessment extending benefit of Customs Notification No.21/2002-Cus dt. 31/03/2002 (list 26). When the same order was cited by the assessee before another Commissioner(Appeals) relating to other Bills of entry in dispute before him, the learned Commissioner(Appeals) taking note of the earlier Order-in-Appeal, held that in spite of the contact rating of the imported relays is above 7 amps for sometime, the earlier order was passed without taking note of the said facts; therefore without following the earlier order, he confirmed the assessment and rejected the assessee's appeal.

4. We have carefully considered the grounds mentioned in the assessee's appeal memorandum as well as the Revenue's appeal. We find that the common factual dispute in both the cases relates to the finding on rating of the imported "Relay" which is relevant in deciding the benefit of Notification No.21/2022-Cus dt. 31/03/2002. In one order, it is said that sometime, it is exceeding 7 amps and in another order passed on the basis of a certificate issued by

Central Power Research Institute dt. 24/03/2010, the learned Commissioner(Appeals) categorically observed that the rating is always less than 7 amps. To resolve the issue, we find it is appropriate to remand the matter to the adjudicating authority to examine the report dt. 24/03/2010 along with technical literatures, catalogues etc. claimed to have been submitted by the assessee-appellant to arrive at the conclusion, whether the "Relays" are designed to exceed 7 amps or otherwise; consequently decide the admissibility of eligibility of Notification No.21/2002-Cus dt. 31/03/2002 (Sl.No.244 List 26). Reasonable opportunity of hearing be given to the assessee. All issues are kept open. Appeals are allowed by way of remand.

(Dictated and pronounced in open court)

(Dr. D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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