CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 1256 of 2012

[Arising out of Order-in-Appeal No. 18 & 19/2012 dated 19.01.2012 passed by the Commissioner of Customs (Appeals), Bangalore]

3M India Ltd **......Appellant**
Concorde Block, Ub City, 24,
Vittal Mallya Road,
Bangalore 560 001

VERSUS

Commissioner of Customs, Bangalore **......Respondent**
Airport & Air Cargo Complex,
Menzies Aviation Bobba Building,
Devanahalli, Bangalore 560 300

with

Customs Appeal No. 1257 of 2012

[Arising out of Order-in-Appeal No. 18 & 19/2012 dated 19.01.2012 passed by the Commissioner of Customs (Appeals), Bangalore]

3M India Ltd **......Appellant**
Concorde Block, Ub City, 24,
Vittal Mallya Road,
Bangalore 560 001

VERSUS

Commissioner of Customs, Bangalore **......Respondent**
Airport & Air Cargo Complex,
Menzies Aviation Bobba Building,
Devanahalli, Bangalore 560 300

APPEARANCE:

Present for the Appellant: Ms Neethu James & Ms Ashwini Nag, Advocates

Present for the Respondent: Sh. Jathin K. A., Authorized Representative

CORAM:

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

FINAL ORDER NO. 21119-21120/2023

DATE OF HEARING: 12.10.2023
DATE OF DECISION: 12.10.2023

PER D. M. MISRA

These two appeals are filed against the common Order-in-Appeal No. 18 & 19/2012 dated 19.01.2012 passed by the Commissioner of Customs (Appeals), Bangalore.

2. Briefly stated facts of the case are that the appellants are engaged in business of import and sales of 'Integrated Level Meter' for which they filed the two Bills of Entry bearing Nos. 3545907 dated 19.05.2011 and 3675744 dated 01.06.2011 declaring the said product under CTH 90279010 applicable to "Microtomes, including parts and accessories thereof – Microtomes, parts and accessories" attracting BCD @7.5%. Later, realising that the correct classification of the said goods should be under CTH 90278090 attracting BCD @nil rate in terms of Sl. No. 35 of Notification No. 24/2005-Cus dated 01.03.2005, they preferred appeals before the ld. Commissioner (Appeals) seeking re-assessment of Bills of Entry and consequent refund of the amount paid in excess. The ld. Commissioner (Appeals) rejected their appeals on the ground that the proper course of action for the appellant would be to file a refund application under Section 27(1)(ii) of the Customs Act, 1962 instead of approaching for re-assessment of Bills of Entry by way of filling appeals. While passing

the said order, the ld. Commissioner (Appeals) followed the judgment of Hon'ble Delhi High Court in the case of *Aman Medical Products Ltd vs. CC, Delhi – 2010 (250) ELT 30 (Del.)*. Hence, present appeals.

3. The ld. Advocate for the appellants submits that the said judgment of Hon'ble Delhi High Court has been overruled by the Larger Bench of Hon'ble Supreme Court in the case of *ITC Limited vs. CCE - 2019 (368) ELT 216 (SC)*. She submits that the Hon'ble Supreme Court laid down the in-filing refund claim, the self-assessed Bills of Entry be also challenged before the proper Forum.

4. The ld. A.R. for the Revenue reiterates the findings of the ld. Commissioner (Appeals).

5. Heard both sides and perused the records.

6. We find that the short issue involved in the present appeal is : whether the appellants are required to file an appeal against the Bills of Entry before filing refund claim seeking re-assessment of Bills of Entry or otherwise.

7. The ld. Commissioner (Appeals) has passed the order relying on the judgment of Hon'ble Delhi High Court in *Aman Medical Products Ltd* 's case (supra) which has been overruled by the Hon'ble Supreme Court in *ITC Limited*'s case (supra). In the result, the impugned order is set aside and the matter is remanded to the adjudicating authority to re-assess the Bills of

Entry as claimed by the appellants. All issues are kept open. Needless to mention that a reasonable opportunity of hearing be given to the appellant. Appeals are allowed by way of remand to the adjudicating authority.

(Dictated and pronounced in the open court)

(D. M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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