CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 1052 of 2010

(Arising out of Order-in-Appeal No.16/2010-Cus. dated 19.1.2010 passed by the Commissioner of Customs (Appeals), Bangalore.)

The Commissioner of Customs
New Custom House
Panambur
Mangalore – 575 010.

Appellant(s)

Versus

M/s. ILC Industries Limited
D 6/7, Near Industrial Estate,
Dam Road,
Hospet - 583 203.

Respondent(s)

AND

Customs Appeal No. 2688 of 2011

(Arising out of Order-in-Appeal No.51/2011 dated 28.06.2011 passed by the Commissioner of Customs (Appeals), Bangalore.)

M/s. ILC Industries Limited
D 6/7, Near Industrial Estate,
Dam Road,
Hospet - 583 203.

Appellant(s)

Versus

The Commissioner of Customs
New Custom House
Panambur
Mangalore – 575 010.

Respondent(s)

Appearance:

Ms. Shrividya, Advocate — For the Assessee

Mr. K. A. Jathin, AR — For the Revenue

CORAM:

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

Final Order No. 21351 - 21352 /2023

Date of Hearing: 17/11/2023
Date of Decision: 17/11/2023

Per : D.M. MISRA

Revenue is in appeal against Order-in-Appeal No.16/2010-Cus. dated 19.1.2010 and assessee is in appeal against Order-in-Appeal No.51/2011 dated 28.6.2011; both passed by the Commissioner of Customs (Appeals), Bangalore. Since, the issue involved in both the appeals are common, they are taken up together for disposal.

2. Briefly stated the facts of the case are that assessee had exported iron ore fines having Fe content of 61% and remitted Customs duty of Rs.60,80,200/-. Since the Fe content was less than 62%, the Notification No.62/2007-Cus. dated 03.05.2007 allows exemption from customs duty, as is in excess of the amount calculated at the rate of Rs.50/- per MT. Consequently, they filed a refund claim of Rs.50,60,200/-of the excess customs duty paid. The Assistant Commissioner rejected their refund claim. On appeal against the said order, the Commissioner (A) allowed their appeal, which was challenged before this Tribunal by Revenue bearing Customs Appeal No.1052 of 2010.

3. In the meanwhile, the Assistant Commissioner implementing the order of the Commissioner (A) sanctioned the refund, but ordered the same to be credited to the Consumer Welfare Fund. Aggrieved by the said order, the assessee filed an

appeal before the learned Commissioner (A), who upheld the order of the adjudicating authority and dismissed their appeal. Thus, the assessee is in appeal before us vide Customs Appeal No. C/2688/2011.

4. The learned advocate arguing on merit submitted that the refund order of the learned Commissioner (A), challenged before this Tribunal by the Revenue has been passed in accordance with law and hence, to be upheld and Revenue's appeal No. C/1052/2010 liable to be be dismissed. Further, he has through documents submitted that the duty burden has not been passed on to their customers, hence transferring the refund to the consumer welfare fund by the adjudicating authority, which is upheld by the Commissioner (A) cannot be sustained. The Appellant are entitled to receive the refund amount and hence, appeal No. C/2688/2011 be allowed.

5. During the pendency of these Appeals, it is brought on record that, one M/s Elite Brilliant Limited had filed an application under Section 9 of Insolvency and Bankruptcy Code, 2016 (in short, "IBC, 2016") as the Operational Creditor for initiation of Corporate Insolvency Resolution Process (in short, "CIRP") against the appellant as Corporate Debtor. The Hon'ble National Company Law Tribunal (in short, "NCLT"), Bangalore approved the Resolution Plan under Section 31(1) of the IBC, 2016 and passed the Order dated 13.01.2020.

6. Per contra, the learned Authorised Representative for the Revenue submits that once the Resolution Plan is approved by the Hon'ble NCLT, the appeals stand abated as per Rule 22 of CESTAT Procedure Rules, 1982 and the Tribunal becomes *functus officio*. In support, he has relied on the following case-laws:-

i. M/s MC Nally Sayaji Engineering Limited vs. CCGST, Bolpur – 2023 (4) TMI 1076 – CESTAT KOLKATA
ii. CCE & ST, Surat-II vs. Arcelormittal Nippon Steel India Ltd – 2023 (2) TMI 231 – CESTAT AHMEDABAD
iii. M/s Jet Airways India Ltd vs. CST, Mumbai-V – 2023 (5) TMI 767 – CESTAT MUMBAI
iv. M/s Bhushan Power & Steel Ltd vs. CCE, Kolkata-IV – 2023 (5) TMI 184 – CESTAT KOLKATA
v. M/s Alok Industries Ltd vs. CCE, Belapur & Mumbai – 2022 (10) TMI 801 – CESTAT MUMBAI
vi. M/s Murli Industries Ltd vs. CCE, Nagpur – 2022 (11) TMI 289 – CESTAT MUMBAI

7. Heard both sides and perused the records.

8. The short question involved in present appeals is: whether the Appeals continue after initiation of Corporate Insolvency Resolution Process (CIRP) and Order approving the Resolution plan passed/approved by the Learned NCLT under Insolvency and Bankruptcy Code, 2016; and relief claimed could be allowed under the changed circumstances.

9. The present Appeals were filed, being aggrieved by the Order of the Ld. Commissioner (Appeals), on various grounds, under section 129 of the CA,1962.

10. Undisputedly, during the pendency of the said Appeals, pursuant to the petition filed by one M/s Elite Brilliant Limited, proceeding has been initiated under IBC, 2016. The Hon'ble NCLT vide Order dated 16.04.2019 admitting the petition

appointed the Interim Resolution Professional (IRP) in the case. The Resolution Plan has been approved by the Hon'ble NCLT vide Order dated 13.01.2020. Consequent to the said Order approving the Resolution Plan, the appellant is now before this Forum.

11. The relevant provision under the CESTAT (Procedure) Rules, 1982 prescribed at Rule 22 reads as under:

> **"RULE 22. Continuance of proceedings after death or adjudication as an insolvent of a party to the appeal or application. —**
>
> Where in any proceedings the appellant or applicant or a respondent dies or is adjudicated as an insolvent or in the case of a company, is being wound up, the appeal or application shall abate, unless an application is made for continuance of such proceedings by or against the successor-in-interest, the executor, administrator, receiver, liquidator or other legal representative of the appellant or applicant or respondent, as the case may be : Provided that every such application shall be made within a period of sixty days of the occurrence of the event : Provided further that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period so specified, allow it to be presented within such further period as it may deem fit."

12. The Mumbai bench of this Tribunal in the case of **M/s. Alok Industries Ltd.'s** *case* (supra) analysed in detail Rule 22 of CESTAT (Procedure) Rules, 1982 and the case laws on the issue including those cited by the Ld. Advocate for the appellant observed that aforesaid Rule 22 should be applicable the moment the successor interest with sufficient rights is appointed by NCLT to make an application for continuation of the proceeding. It is observed as:

> "**4.4** -----------------
>
> Learned advocate has labored to explain why this rule should not be made applicable in his case. However, in view of the fact as stated in the para 4.2 and 4.3 above we are of the view that moment the successor interest with sufficient rights to be represented is appointed by the NCLT this rule

will become applicable and it is for the successor interest to make an application for continuance of the proceedings. In the present case no such application has been filed by the successor interest for the continuance of the proceedings and hence the appeal stands abated by the operation of this rule.

4.5 ……………………….

4.6 There is no dispute to the binding nature of the resolution plan as approved by the NCLT. It has been settled by the Hon'ble Apex Court in the cases referred to by the learned counsel for the applicant.

4.7 …………………….

4.8 However, from the date of approval of the resolution plan by the NCLT, the appeal filed by the applicant has abated and CESTAT has become functus officio in the matters relating to this appeal. Further it is also settled that the impugned orders in the appeals have got merged in the order of the NCLT approving the Resolution Plan. The decision of the Hon'ble Bombay High Court referred to by the learned Authorized representative clearly lays down the test as in which condition the said doctrine shall apply in following manner.

…………………….

4.9 We are satisfied that the test laid down by the Hon'ble High Court is applicable in the present case for us to hold so. It is quite interesting to note that applicant to the extent of demand made finds the order of NCLT binding and wants pronouncement in respect of the refund by this tribunal. Can we sit in judgement over the order of NCLT approving the resolution plan? Further issue of refund is any case not the issue raised in appeal it is for the applicant to approach the relevant authorities in the matter.

…………………….

5.1 The appeals filed abate as per the Rule 22 of the CESTAT Procedure Rules, 1982, with effect from the date of the approval of the resolution plan by the NCLT.

5.2 Since the appeals have abated the miscellaneous application filed by the applicant/appellant does not survive."

13. Similar view has been expressed by other Benches of this Tribunal in the following cases cited by the learned Authorised Representative for the Revenue.

i. M/s. MC Nally Sayaji Engineering Limited vs. CCGST, Bolpur – 2023 (4) TMI 1076 – CESTAT KOLKATA;
ii. CCE & ST, Surat-II vs. ArcelorMittal Nippon Steel India Ltd – 2023 (2) TMI 231 – CESTAT AHMEDABAD;

iii. M/s. Jet Airways India Ltd vs. CST, Mumbai-V – 2023 (5) TMI 767 – CESTAT MUMBAI;
iv. M/s. Bhushan Power & Steel Ltd vs. CCE, Kolkata-IV – 2023 (5) TMI 184 – CESTAT KOLKATA;
v. M/s. Murli Industries Ltd vs. CCE, Nagpur – 2022 (11) TMI 289 – CESTAT MUMBAI.

14. Needless to mention, as observed by the Hon'ble Supreme Court and High Courts in catena of cases that the Tribunal is a creature of the statute; it cannot travel beyond the express powers vested under the Statute or Rules framed under the statute, while deciding a statutory Appeal filed before it against the Orders of the prescribed statutory authorities mentioned under the statute. The corollary, any order passed by the Tribunal beyond the vested powers under the statute would be *non est* in law.

15. The judgements cited by the learned Advocate for the assessee may not be applicable to the facts and circumstances of the present case. In the case of **Ruchi Soya Industries Ltd - 2022 (380) ELT 8 (SC)**, the matter was before the Hon'ble Supreme Court against the rejection of a writ of mandamus filed before the Hon'ble Karnataka High Court assailing applicability of Notification No. 38/2002-(NT) dated 13.06.2002 to imported crude palm oil. In that context the Hon'ble Supreme Court directed refund of the amount collected at the time of admission of appeals pursuant to the resolution plan approved by the NCLT. Similarly, in the **GGS infrastructure Private Limited's case**, the Hon'ble Bombay High Court was approached by filing writ under article 226 claiming relief set out in paragraph 2 of the said order. The Hon'ble High Court while allowing the writ

petition passed certain direction to be implemented including refund of the amount after adjustment. Also, the Hon'ble Karnataka High Court in **Ruchi soya Industries Ltd.'s** case, while disposing the writ appeal against the order of the single judge, dismissed the appeal on merit. In none of the above cases, the principle governing the circumstances after abatement of the appeals on fulfilment of conditions under Rule 22 of CESTAT (Procedure) Rules, 1982 by the Tribunal has been discussed and laid down.

16. In the circumstances, we are in complete agreement with the view consistently expressed by this Tribunal in a series of cases referred as above that the appeal abates once the IRP is appointed and/or Resolution plan approved. Consequently, the appeals abate as per Rule 22 of CESTAT (Procedure) Rules, 1982 and this is the relief/Order could be passed as prescribed under the said Rule.

17. In view above observations, appeal filed by the Revenue as well as appeal filed by the assessee abates.

(Operative portion of the Order was pronounced in Open Court.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

rv