CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 28553 of 2013

[Arising out of Order-in-Appeal No. 41/2013 dt. 11/09/2013 passed by the Commissioner of Customs (Appeals), Cochin]

M/s. General Rubbers, **......Appellant**
Industrial Estate,
Ettumanoor P.O.,
Kottayam District, Kerala.

VERSUS

Commissioner of Customs, **......Respondent**
Customs House, Willingdon Island,
Cochin – 682 009. Kerala

AND

Customs Appeal No. 28554 of 2013

[Arising out of Order-in-Appeal No. 40/2013 dt. 11/09/2013 passed by the Commissioner of Customs (Appeals), Cochin]

M/s. General Rubbers, **......Appellant**
Industrial Estate,
Ettumanoor P.O.,
Kottayam District, Kerala.

VERSUS

Commissioner of Customs, **......Respondent**
Customs House, Willingdon Island,
Cochin – 682 009. Kerala

Appearance:

Mr. Abraham Markos, Advocate for the appellant.

Mr. Maneesh Akhoury, Assistant Commissioner (AR) for the respondent.

Coram:
Hon'ble Dr. D.M. Misra, Member (Judicial)
Hon'ble Smt. R. Bhagya Devi, Member (Technical)

Final Order No. 21360-21361 / 2023

Date of Hearing: 12/12/2023
Date of Decision:12/12/2023

Per : Dr. D.M.Misra

These two appeals have been filed against respective Orders-in-Appeal passed by the Commissioner of Customs(Appeals), Cochin.

2. Briefly stated the facts of the case are that the appellant imported insoluble Sulphur (Crystex HS OT 20) from Germany and filed Bill of Entry No.263290 dt. 10/02/2010 (appeal No.C/28553/2013) and Bill of Entry No.250740 dt. 28/07/2009 (appeal No.C/28554/2013) claiming classification under CTH 2503.00.90 of Customs Tariff Act, 1975. They have declared the goods imported as insoluble Sulphur with trade name "Crystex HS OT 20 which is used as vulcanising agent for rubber. The assessing authority rejected the classification claimed by the appellant and assessed the goods finally under CTH 3812.30.30. The appellant objected to the said assessment; however cleared the goods on payment of duty 'under protest'; later filed appeal before the learned Commissioner(Appeals) challenging the said assessment. The learned Commissioner(Appeals) without deciding the classification on merit, rejected their appeals on the ground that no request has been made by the appellant for

speaking order by the assessing officer. Hence the present appeals.

3.1. The learned advocate for the appellant has submitted that the assessing officer has wrongly rejected their classification under CTH 2503.00.90 and classified the product under CTH 3812.30.30 when all the relevant documents and invoices clearly show that the goods are classifiable under CTH 2503.00.90 being insoluble Sulphur. The classification adopted by the Department is a broad description, hence the classification declared by the appellant being specific; therefore under Rule 3(a) of the General Rules of Interpretation, the specific entry be preferred to the general entry in the Tariff. Further he has submitted that the issue is covered by the decision of this Tribunal in the case of ***Collector of Customs Vs. CEAT Tyres [1989 (44) ELT 333]*** and in the case of ***Apollo Tyres Ltd. Vs. Collector of Customs [1990(45) ELT 502]***. Subsequently, similar orders have been passed by the Tribunal following the aforesaid judgments.

3.2. He has further submitted that the learned Commissioner(Appeals) without going into merits of the case on a mis-interpretation of Section 17(5) of the Customs Act, 1962 observing that the appellant had accepted the reclassification of the product; rejected their appeals. Further he has submitted that in view of the judgment of the Hon'ble Supreme Court in the case of ***ITC Ltd. Vs. CCE, Kolkata-IV [2019(368) ELT 216 (SC)],*** the assessment order is appealable.

4. Learned AR for the Revenue reiterated the findings of the learned Commissioner(Appeals).

5. Heard both sides and perused the records.

6.1. The short question involved in the present case is whether the learned Commissioner(Appeals) is justified in rejecting the appeals without deciding the issue on merits taking the recourse of Section 17(5) of the Customs Act, 1962. The said provision is as follows:-

> ***"17. Assessment of duty.*** –
>
> *1. ….*
> *2. ….*
> *3. ….*
> *4. ….*
>
> *5. Where any assessment done under sub-section (2) is contrary to the claim of the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification therefor under this Act, and in cases other than those where the importer or the exporter, as the case may be, confirms his acceptance of the said assessment in writing, the proper officer shall pass a speaking order within fifteen days from the date of assessment of the bill of entry or the shipping bill, as the case may be.*

6.2. In the present case, we find that after rejection of the classification of the appellant declared in their Bills of Entry, they paid the duty under protest and preferred appeal before the learned Commissioner(Appeals). Therefore, the learned Commissioner(Appeals) ought to have decided the appeals on merits instead of rejecting the same by observing that the appellant has accepted the re-assessment. Further, the Hon'ble Supreme Court in the case of ***ITC Ltd.*** (supra) has held that Revenue as well as appellant can prefer an appeal against the order of the assessment. Their lordships have observed as:

> ***43.*** *As the order of self-assessment is nonetheless an assessment order passed under the Act, obviously it would be appealable by any person aggrieved thereby. The expression 'Any person' is of wider amplitude. The revenue, as well as assessee, can also prefer an appeal aggrieved by an order of assessment. It is not only the order of re-assessment which is appealable but the provisions of Section 128 make appealable any decision or order under the Act including that of self-assessment. The order of self-assessment is an order of assessment as per Section 2(2), as such, it is appealable in case any person is aggrieved by it. There is a specific provision made in Section 17 to pass a reasoned/speaking order in the situation in case on verification, self-assessment is not found to be satisfactory, an order of re-assessment has to be passed under Section 17(4). Section 128 has not provided for an appeal against a speaking order but against "any order" which is of wide amplitude. The reasoning employed by the High Court is that since there is no lis, no speaking order is passed, as such an appeal would not lie, is not sustainable in law, is contrary to what has been held by this Court in Escorts (supra).*

7. In view of the above, the impugned orders are set aside and the case is remanded to the learned Commissioner(Appeals) to decide the issue of classification on merit, after affording an opportunity of hearing to the appellant. since the assessment involved in the appeals is more than a decade old, it is directed that the remand proceeding be completed within three months from the date of communication of this order. All issues are kept open. Appeals are allowed by way of remand.

(Operative part of this order was pronounced in open court
on conclusion of hearing)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

Raja...