CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
1st Floor, WTC Building, FKCCI Complex, K. G. Road,
BANGLORE-560009

COURT-2

Customs Appeal No. 21948 of 2014

[Arising out of the Order-in-Appeal No.COC-CUSTM-000-APP-400-13-14 dated 31.03.2014 passed by the Commissioner of Customs (Appeals), Cochin.]

M/s. Kerala Feeds Ltd. **....Appellant**
Kallettumkara,
Trissur – 680 683.
Kerala

Vs.

The Commissioner of Customs **....Respondent**
Custom House
Cochin – 682 009.

Appearance:

Mr. M. Balagopal, Advocate **....For Appellant**

Mr. K. A. Jathin, Dy. Com. (AR) **.... For Respondent**

CORAM:

HON'BLE MR. P. A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS R. BHAGYA DEVI, MEMBER (TECHNICAL)

Date of Hearing: 11.08.2023

Date of Decision: 14.12.2023

FINAL ORDER No. 21363 of 2023

Per P. A. AUGUSTIAN:

The Appellant, is a Government of Kerala undertaking had imported TMR Mixer Wagon for KFL Densified Fodder Plant declaring the goods under Chapter 8436 99 00 and claimed the exemption of customs duty. However, the Adjudicating authority classified the goods under CTH 8716 20 00 and assessed the goods accordingly. Aggrieved by said order, the Appellant filed appeal before the Commissioner (Appeals) and as per the impugned order dated 12.03.2014, the Commissioner (Appeals) rejected the Appeal on the ground that since the appellant had accepted the assessment order without Any dissent in writing it had attained finality in terms of section 17 and there can be no appeal against the same.

2. When the matter came up of hearing, Ld Counsel for the Appellant submits that the goods imported by the Appellant is part of Animal Feed Mills and the appellant made true declaration of the goods. The Ld. Counsel also drew our attention to the findings of the Appellate authority wherein it is held that while rejecting the appeal, the Commissioner (Appeals) stated that the assessment order passed by the Department has been accepted by the Appellant and the goods were subsequently cleared. The Appellant did not express any dissent in writing nor asked for a speaking order. However, Ld. Counsel strongly objected the said finding and submitted that though it is admitted that they have cleared the goods as per the assessment made by the Adjudicating authority, Appellant vide letter dated 09.02.2011 intimated the respondent that the goods are being cleared since it is urgently required and protest was registered under Sl. No. 02/09 dated 09.02.2011 before the respondent. The said communication was produced before the Appellate authority.

However, the same was not considered. Moreover, the classification of the goods was made against the declaration made by the Appellant and it was for the Revenue to show that the Appellant had accepted the classification as held by Appellate authority. Ld. Counsel drew out attention to the following decisions of this Tribunal:-

i) M/s Ashoosons Vs Commissioner of Customs, New Delhi (2009 (239) E.L.T 107 (Tri. Del)
ii) Ruchi Soya (2013 (296) E.L.T 114 (Tri. Ahmd)
iii) M/s Grasim Industries Ltd Vs Commissioner of Customs, Bombay (1998 (104) E.L.T 95 (Tribunal)

3. Learned Authorized Representative reiterated the findings.

4. Heard both sides. We find that the issue is no more *res integra* as the Hon'ble Supreme Court in the case of **ITC Ltd. vs. Commissioner of Central Excise, Kolkata-IV: 2019 (368) ELT 216 (SC)** has observed as under:

> **"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)."

5. In the present case, the assessment is made against the declaration made by the appellant and inspite of recording the protest made by the appellants against such assessment, no speaking order was issued. As observed by the Hon'ble Supreme Court, even if there is no *lis*, speaking order is mandatory once the assessment was challenged under protest.

6. In view of the above, the matter is remanded to the Adjudicating Authority to decide the issue on merits in the light of Hon'ble Supreme Court's order referred above in the case of ITC Ltd. (supra). The Adjudicating Authority is directed to decide the issue within three months from the date of receipt of this order. Needless to say, that the appellants may be granted an opportunity of hearing before deciding the issue. The appeal is allowed by way of remand.

(Order pronounced in open court on ....14.12.2023..)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI
MEMBER (TECHNICAL)

Ganesh