## CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
## BANGALORE

REGIONAL BENCH - COURT NO. I

### Customs Appeal No. 28343 of 2013

[Arising out of Order-in-Appeal No. 12/2013 dated 29.08.2013 passed by the Commissioner of Customs (Appeals), Cochin]

**M/s Sylvan Traders** **......Appellant**
11/843 A1, 843 A2,
Near T.V. Centre, Kakkand,
Cochin, Kerala - 682037

*VERSUS*

**Commissioner of Customs,** **......Respondent**
Customs House, Willingdon Island,
Cochin, Kerala - 682009

WITH

### Customs Appeal No. 28344 of 2013

[Arising out of Order-in-Appeal No. 12/2013 dated 29.08.2013 passed by the Commissioner of Customs (Appeals), Cochin]

**M/s Sylvan Traders** **......Appellant**
11/843 A1, 843 A2,
Near T.V. Centre, Kakkand,
Cochin, Kerala - 682037

*VERSUS*

**Commissioner of Customs,** **......Respondent**
Customs House, Willingdon Island,
Cochin, Kerala - 682009

AND

### Customs Appeal No. 28345 of 2013

[Arising out of Order-in-Appeal No. 12/2013 dated 29.08.2013 passed by the Commissioner of Customs (Appeals), Cochin]

**M/s Sylvan Traders** **......Appellant**
11/843 A1, 843 A2,
Near T.V. Centre, Kakkand,
Cochin, Kerala - 682037

*VERSUS*

**Commissioner of Customs,** **......Respondent**
Customs House, Willingdon Island,
Cochin, Kerala - 682009

**<u>APPEARANCE:</u>**

Present for the Appellant: None
Present for the Respondent: Sh. Jathin K.A., Authorized Representative

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

## FINAL ORDER NO. 21429-21431/2023

DATE OF HEARING: 20.12.2023
DATE OF DECISION: 20.12.2023

**PER D. M. MISRA**

These three appeals are directed against Order-in-Appeal No. 12/2013 passed by the Commissioner of Customs (Appeals), Cochin.

2. Briefly stated facts of the case are that the appellant are engaged in importing and trading of all types of plywood, MDF boards, laminated sheets etc. They have purchased the pinewood rejects under a High Seas Sale Agreement dated 07.02.2013 and imported the same under the Bills of Entry No. 9292863 dated 12.02.2013 (Appeal No. C/28343/2013), 2263563 dated 29.05.2013 (Appeal No. C/28344/2013) and 9621668 dated 30.03.2013 (Appeal No. C/28345/2013) respectively, classifying the same under CTH 44079200 of CTA, 1975. The Assessing Officer considering the imported goods as 'standard pinewood' and not 'pinewood rejects', enhanced the value from $140 per CBM to $220 per CBM, from $140 per CBM to $160 per CBM and from $140 per CBM to $200 per CBM respectively. The appellant

cleared the said goods on payment of duty on enhanced value under protest and filed appeal against the assessment order passed by the adjudicating authority. The ld. Commissioner (Appeals), however, without deciding on merit rejected their appeals. Hence, the present appeals.

3. In their grounds of appeal, the appellant have submitted that the findings of the ld. Commissioner (Appeals) that there was no disagreement with the assessment as envisaged in Section 17(5) of the Customs Act, 1962 is erroneous. They have submitted that there is no necessity of a speaking order in order to file an appeal since the appellant had paid the duty under protest itself constitutes a valid ground for filing the appeal. Referring to the order of Hon'ble Kerala High Court in W.P. (C) No. 13979/2013 dated 11.06.2013 to consider the appeal filed by the appellant, they have submitted that it was not taken note by the ld. Commissioner (Appeals).

4. The ld. AR for the Revenue reiterated the findings of the Commissioner (Appeals).

5. We find that the ld. Commissioner (Appeals) has not decided the issue on merit, but rejected the appeal on the ground that against the assessment order, no speaking order was passed by the adjudicating authority and hence, the appeal cannot be filed against the Bill of Entry. We find that the issue is no more res integra and is squarely covered by the judgment of Hon'ble

Supreme Court in the case of ***ITC Ltd vs CCE, Kolkata-IV – 2019 (368) ELT 216 (SC)***, wherein their Lordships 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)."*

Following the aforesaid judgment, we set aside the impugned order and remand the matter to the ld. Commissioner (Appeals) to decide the issue on merit after observing the principles of natural justice. Since the matter is quite old, it is directed to the Commissioner (Appeals) to pass the order within three months from the date of communication of this order.

6. Appeals are disposed of by way of remand to the Commissioner (Appeals).

(Dictated and pronounced in the open court)

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

**(R. BHAGYA DEVI)**
**MEMBER (TECHNICAL)**

RA_Saifi