CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 22390 of 2015

(Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-191/2015-16 dated 05.10.2015 passed by the Commissioner of Customs (Appeals), Cochin.)

M/s. Jiney Publications,
3rd Floor, Muttavencheriyil Building,
Kizhakkambalam P.O.,
Ernakulam – 683 562.

Appellant(s)

VERSUS

The Commissioner of Customs,
Customs House,
Willingdon Island,
Cochin – 682 009.

Respondent(s)

APPEARANCE:

None for the Appellant

Shri K. Vishwanatha, Superintendent (AR) for the Respondent

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

Final Order No. 20268 /2024

DATE OF HEARING: 03.04.2024
DATE OF DECISION: 03.04.2024

PER : DR. D.M. MISRA

None present for the appellant. Learned advocate for the appellant requests for adjournment on the ground that he could not reach the appellant through mail or mobile number provided to them at the time of filing appeal. The learned Authorised Representative (AR) for the Revenue submits that further adjournments will not yield any result. Consequently, the appeal is taken up for hearing and disposal.

2. Briefly stated the facts of the case are that the appellant had filed Bills of Entry No.6782194 and 6782195 on 17.09.2014

declaring the goods as Art Gloss Paper wrongly mentioning the classification under CTH 48119099 instead of CTH 48101920 resulting into payment of higher duty. Later, they approached the original authority seeking rectification of the error under Section 149 of the Customs Act, 1962. The adjudicating authority rejected their request, hence, they approached the learned Commissioner (Appeals), who also rejected their appeal on the ground that the appellant had opted for self-assessment and the assessment has reached finality. Hence, the present appeal.

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

4. We find that the short issue involved in the present appeal for consideration is whether an appeal can be filed against self-assessment order. Following the judgement of the Hon'ble Supreme Court in the case of ***ITC Ltd. Vs. CCE, Kolkata-IV [2019(368) ELT 216 (SC)],*** this Tribunal in a similar set of facts in the case of **Midas Treads (India) Pvt. Ltd. vs. CC, Cochin** vide **Final Order No.20233/2024 dated 02.04.2024** observed as:

> 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.

5. Following the above precedent, we set aside the impugned order and remand the matter to the learned Commissioner (Appeals) to decide the case on merit. Needless to mention principle of natural justice be observed. Appeal is allowed by way of remand to the learned Commissioner (Appeals).

(Order dictated and pronounced in Open Court.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R BHAGYA DEVI)
MEMBER (TECHNICAL)

Triveni