CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 22268 of 2014

(Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-385-13-14 dated 27.03.2014 passed by the Commissioner of Customs(Appeals), Cochin)

Chackalath Corporation
No.39/4698 A, Karipatta Road,
(near R.K.Oberoi Hotel),
Pallimukku,
Cochin, Kerala – 682 016.

Appellant(s)

VERSUS

Commissioner of Customs(Appeals), Cochin
Customs House,
Cochin,
Kerala – 682 009.

Respondent(s)

APPEARANCE:

Mr. Baby, M.A., Advocate for the Appellant

Mr. K.A. Jathin, Deputy Commissioner(AR) for the Respondent

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

Final Order No. 20480 /2024

DATE OF HEARING: 11.06.2024
DATE OF DECISION: 11.06.2024

PER : D.M. MISRA

This is an appeal filed against Order-in-Appeal No.COC-CUSTM-000-APP-385-13-14 dated 11.03.2014 passed by the Commissioner of Customs (Appeals), Cochin.

2. Briefly stated the facts of the case are that the appellant is engaged in distribution of seeds, fertilisers, pesticides, brush

cutters / weed cutters and agricultural implements. They have filed a Bill of Entry No.2635785 dated 24.01.2011 for import of brush cutters with Honda GX35 engine through Cochin port classifying the said product under CTH 8432. However, on the direction of the Customs, they accepted the classification of the said product under CTH 8467 and discharged duty accordingly. Later they challenged the assessment order before the learned Commissioner(Appeals) who rejected their appeal observing that since the appellant had accepted the assessment and no speaking order was passed under Section 17(5) of the Customs Act, 1962; therefore the same cannot be challenged before him. Hence, the present appeal.

3. Learned advocate for the appellant submits 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 once the goods are cleared for home consumption, the assessment is deemed to have reached finality and 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 appellant's claim of benefit under the above said notifications as 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 appeal 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 order is set aside and the case is remanded to the learned Commissioner(Appeals) to decide the issues on merit, after affording an opportunity of hearing to the appellant. Since the assessment involved in the appeal is around a decade old, it is directed that the *de novo* proceeding be completed within three

months from the date of communication of this order. All issues are kept open. Appeal is allowed by way of remand.

(Operative part of this order was pronounced in Open Court on conclusion of the hearing.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

Raja…