CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

C/21767/2017-SM

[Arising out of Order-in-Appeal No. 489/2017 dated 12/09/2017 passed by Commissioner of CUSTOMS , BANGALORE-I(Appeal)]

Velankani Electronics Pvt Ltd
Block Viii 1st Floor Velankani Information
Systems Campus No 43 Electronic City Phase
Ii Hosur Road
BANGALORE - 560100
KARNATAKA

Appellant(s)

Versus

Bangalore-cus Respondent(s)

Appearance:

Shri Rajesh Kumar, TR, CA
HIRAGANGE & ASSOCIATES
#1010, 1st floor(Above Corp.Bank) 26th
Main, 4th T Block, Jayanagar, Bangalore
Bangalore - 560041
Karnataka

For the Appellant

Smt. Kavitha Podwal, Superintendent(AR) For the Respondent

Date of Hearing: 23/02/2018
Date of Decision: 23/02/2018

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 20314 / 2018

Per : S.S GARG

The present appeal is directed against the impugned order dt. 12/09/2017 passed by the Commissioner of Customs (Appeals) whereby the Commissioner(Appeals) has rejected the appeal for want of jurisdiction without deciding the issue on merit.

2. Briefly the facts of the present case are that the appellants are engaged in the manufacture of excisable goods viz. set top boxes falling under Chapter 85287100 of CETA, 1985. The appellant has executed a bond with the Assistant Commissioner of Central Excise, Jayanagar Division, Bangalore-III Central Excise Commissionerate for an amount of Rs.15 crores and equivalent surety bond under Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules 2016 and are registered for availing of exemption from payment of Customs duty and CVD on imported goods. The appellant filed Annexure-III No.203/2016-17 dt. 30/01/2017 for import of goods with the lower adjudicating authority and was allowed to import the goods valued at Rs.79,81,083/- on concessional rate of duty vide Bill of Entry No.8368805 dt. 30/01/2017. The appellant vide letter dt. 31/01/2017 informed the LAA that the entire quantity has been received and there is no shortage / excess quantity detected on receipt of the goods in their factory premises. However, the appellant vide letter dt. 22/02/2017 informed the LAA that during physical verification of the items, it was noticed that No.CC 0402B104J160CT WL – Specification Chip Cap, the quantity mentioned by the shipper was 12,21,000 pcs. with invoice value of USD 769.23 whereas the actual quantity received is 1,22,10,000 pcs. and similarly an item namely Fuse Board Mount – 1,70,000 pcs valued 17,000 were not received. Accordingly, the LAA vide letter dt. 28/02/2017 requested the appellant to rectify the subject Bill of Entry and to pay the differential duty. However, when the appellant failed to comply the directions, a show-cause notice dt. 28/02/2017 was issued and was confirmed by the LAA vide his

order wherein differential duty of Rs.1,64,303/- was confirmed along with applicable interest and penalty of Rs.1,64,303/- was also imposed under Section 112 of Customs Act, 1962 and the said goods were confiscated under Section 111(f) of the Customs Act, 1962.

3. Heard both sides and perused records.

4. The learned consultant for the appellant submitted that the impugned order passed by the Commissioner(Appeals) is not sustainable in law. He further submitted that once the Commissioner(Appeals) has come to the conclusion that the appeal is not maintainable before him, then immediately the appellant filed a letter to the Commissioner(Appeals) requesting him to transfer the case to the appropriate appellate authority, if it is not related to Customs appeal but the Commissioner of Customs (Appeals) without considering the request of the appellant rejected the appeal on the ground of lack of jurisdiction. Learned consultant further submitted that in the case of Premchand Gokaldas Vs. CST, Ahmedabad [2010(17) STR 36 (Tri. Chennai)], it was held by the Tribunal that “it was equally the duty of the officer before whom the appeal was wrongly filed, to transfer the papers to the right forum”. Similarly in the case of Maruti Udyog Ltd. Vs. CC, Kandla [2009(16) STR 178 (Tri. Ahmd.)], where it was held that “Commissioner, ought to have transferred appeal papers to appropriate office”. The learned consultant further submitted that in view of the decisions cited supra, it was incumbent upon the Commissioner(Appeals) to transfer the appeal to the appropriate authority

but he did not do that. Thereafter the appellant filed the appeal before the Commissioner of Central Excise(Appeals) and requested him to consider the appeal as if it is filed on 22/05/2017 in view of the letter written by him to the Commissioner of Customs (Appeals). But the Commissioner of Central Excise(Appeals) rejected the appeal filed by the appellant which is contrary to the law. The CCE(Appeals) did not accept the appeal on the ground that there is no provision in law for resubmission of an appeal and that too after the appeal has been disposed of by the competent authority. Learned consultant submitted that the CC(Appeals) has not disposed of the appeal on merit instead he rejected the appeal on jurisdiction. Learned consultant further submitted that the appeal filed before the CC(Appeals) should be considered in time and the time spent in pursuing before the wrong forum should be excluded. In support of his submission, he relied upon many decisions of the Tribunal, few of them are mentioned herein below:-

i. SR Enterprises Vs. CCE Hyderabad [2015(38) STR 835 (Tri. Bang.)]
ii. Braun Textile Processors Vs. CC(Export) [2016(333) ELT 390 (Del.)]
iii. Gilco Export Ltd. Vs. UOI [2015(317) ELT 229 (P&H)]

5. On the other hand, the learned AR defended the impugned order.

6. After considering the submissions of both sides and perusal of material on record and the various decisions relied upon by the appellant, I am of the view that the Commissioner of Customs(Appeals) should not

have rejected the appeal on jurisdiction. If the Commissioner of Customs(Appeals) was of the view that the appeal lies to the Commissioner of Central Excise(Appeals) then he should have sent the same to that authority but he did not do so in spite of the request made by the appellant vide his letter dt. 08/09/2017. Further I find that the rejection of the appeal by the Commissioner of Central Excise(Appeals) on the ground that there is no provision of resubmission of the appeal once the appeal is disposed of by the competent authority, this finding of the Commissioner of Central Excise(Appeals) is not sustainable because the Commissioner of Customs(Appeals) has not disposed of the appeal on merit; he has rejected the appeal for the reason of wrong jurisdiction;. In view of this, I am of the considered opinion that the impugned order passed by the Commissioner of Central Excise(Appeals) as well as the Commissioner of Customs (Appeals) are not sustainable in law. Therefore I allow the appeal of the appellant and direct the Commissioner of Central Excise(Appeals) to entertain the appeal which is filed in time and to decide the same on merit after affording an opportunity of hearing to the appellant. The appeal is accordingly allowed.

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

S.S GARG
JUDICIAL MEMBER

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