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

Appeal(s) Involved:

C/21561/2017-SM

[Arising out of Order-in-Appeal No. 127/2017 dated 23/05/2017 passed by Commissioner of CUSTOMS, COCHIN (Appeal).]

M/s. Mainiprecision Products Pvt. Ltd
Bammasandra Industrial Area
BANGALORE.
KARNATAKA

Appellant(s)

Versus

Commissioner of Customs and Service Tax Bangalore-cus
C.R. BUILDING,QUEENS ROAD,
P.B.NO. 5400,
BANGALORE, - 560001
KARNATAKA

Respondent(s)

Appearance:

Mr. Venkatesan, Manager of the appellant-company — For the Appellant

Mrs. Kavitha Podwal, AR — For the Respondent

Date of Hearing: 03/04/2018
Date of Decision: 03/04/2018

CORAM:

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

Final Order No. 20509 / 2018

Per : S.S GARG

The present appeal is directed against the impugned order dated 23.5.2017 passed by the Commissioner (A) whereby the Commissioner (A) has rejected the appeal of the appellant and upheld the Order-in-Original.

2. Briefly the facts of the present case are that the appellant is registered with Central Excise initially exported goods namely viz., Full Tension Sleeve falling under CETSH 84879000 to M/s. Black & Decker, Macau/Czech Republic. Whereas out of total quantity of 4032 full tension sleeves, a quantity of 3044 was rejected and sent back to India which were received by the appellant at their factory on 23.6.2012. These rejected goods were again re-worked with respect to anomaly of base of internal diameter of goods and were re-exported by manual Shipping Bill No.4024 & 4025 both dated 28.6.2013. The Assistant Commissioner (Original Authority), who apparently was also holding the charge of examination of export cargo, during the material time also personally examined the goods on 23/07/2013 and subsequently rejected the claim of the appellant on the grounds that identity of goods are not established vis-à-vis marks and numbers and classification. Aggrieved by the Order-in-Original, appellant filed appeal before the Commissioner (A), who rejected the appeal. Hence, the present appeal.

3. On behalf of the appellant, Shri K. Venkatesan, Manager of the appellant-company appeared and reiterated the grounds of appeal.

4. Learned AR submitted that this case pertains to drawback and as per Section 129A of the Customs Act, 1962, this Tribunal does not have jurisdiction to decide such claims as it is specifically kept outside the jurisdiction of this Tribunal.

5. I have examined the provisions of Section 129A, which is extracted herein below:

> **"Section 129A in the Customs Act, 1962**
>
> [129A Appeals to the Appellate Tribunal. —
>
> (1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order—
>
> (a) a decision or order passed by the [301] [Commissioner of Customs] as an adjudicating authority;
>
> (b) an order passed by the [302] [Commissioner (Appeals)] under section 128A;
> (c) an order passed by the Board or the Appellate [301] [Commissioner of Customs] under section 128, as it stood immediately before the appointed day;
>
> (d) an order passed by the Board or the [301] [Commissioner of Customs], either before or after the appointed day, under section 130, as it stood immediately before that day: [Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to,—
>
> (a) ….
>
> (b) …..

> (c) payment of drawback as provided in Chapter X, and the rules made thereunder: Provided further that] the Appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or clause (d) where—
>
> (i) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under section 125; or
>
> (ii) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or
>
> (iii) the amount of fine or penalty determined by such order, does not exceed [Fifty thousand rupees.]

I find that the jurisdiction of the Tribunal is specifically barred under Section 129A to entertain such claims. In view of this specific bar, I am of the considered opinion that the Tribunal does not have jurisdiction and on such issues, only the Revisionary Authority has the power to decide the drawback claims. Consequently, the present appeal is dismissed being not maintainable.

(Order was pronounced and dictated
in Open Court on **03/04/2018**)

S.S GARG
JUDICIAL MEMBER

rv...