CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO.1

Application(s) Involved:

Customs Early Hearing No. 20027 of 2023
in
Customs Appeal No. 20818 of 2022

Appeal involved:
Customs Appeal No. 20818 of 2022

(Arising out of No. CBIC-DIN-20220872-MR-000000-A869 dated 29/08/2022 passed by Commissioner of CUSTOMS , BANGALORE)

Advanced Fiber Solutions
No 28, 17th A Cross,
Bhuvaneshwari Nagar, Kempapura ,
Hebbal,
BANGALORE - 560024
KARNATAKA

Appellant(s)

VERSUS

Commissioner Of Customs, Bangalore
C.R. BUILDING, QUEENS ROAD,
P.B.NO. 5400,
Bangalore - 560001
Karnataka

Respondent(s)

APPEARANCE:

Shri S. Vibu Nandan, Advocate for the appellant.
Shri K. Vishwanathan, 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. 20130 / 2023

Date of Hearing: 24/02/2023
Date of Decision: 24/02/2023

Per : DR. D.M.MISRA

This miscellaneous application has been filed seeking early hearing of the appeal on the ground that the goods viz. "Optical

PLC Splitter" falling under chapter sub-heading 8517 79 90 as claimed by the appellant, proposed to be classified by the Department under 8517 62 90 of Customs Tariff Act, 1975. Consequently, the goods were seized but on request for provisional release, exorbitant amount of bank guarantee which is five times of the differential duty, imposed by the adjudicating authority. The learned advocate submits that since this is a live consignment, the matter be heard early as already six months have been passed from the date of import of the goods and they have been incurring heavy warehousing charges pending provisional release of the goods.

2. Learned AR for the Revenue raised a preliminary objection on the maintainability of the appeal before this forum. After ascertaining from the field formation, the learned AR submits that the order for provisional release dt. 29/08/2022 was passed by the Additional Commissioner of Customs; hence appeal against the said order would lie before the Commissioner of Customs (Appeals), Bangalore in terms of Section 128A of the Customs Act, 1962. It is his contention that therefore, the appeal should be dismissed.

3. Learned advocate for the appellant submits that in view of the Circular dt. .08/06/2018, as per the financial limit prescribed, the power of adjudication is vested with Commissioner of Customs. However, on a query from the Bench as to who is the adjudicating authority in the present case who fixed the value of the goods as well as bank guarantee amount for provisional release of the goods pending adjudication, the learned advocate could not reply the same.

4. Since the issue involved is in a very narrow compass, after hearing the learned AR on the issue of maintainability, we thought it is appropriate to dispose of the appeal itself instead of first allowing miscellaneous application and adjourn the matter to consider the appeal. Accordingly, after allowing the miscellaneous application, we take up the appeal itself for disposal, with the consent of both sides.

5. After hearing both sides and perusal of the case records, we are of the view that the appellant ought to have filed appeal before the learned Commissioner(Appeals), instead of approaching this Tribunal directly. However, in the interest of justice, we therefore direct the appellant to approach the learned Commissioner(Appeals), if so advised and the learned Commissioner(Appeals) would consider to condone the delay of the period consumed before this Tribunal in pursuing the remedy, if the appeal before him is filed by the appellant within a reasonable period. Miscellaneous application as well as appeal disposed of accordingly.

(Dictated and pronounced in open court)

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

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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