IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHENNAI</u>

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 40283 of 2021

(Arising out of Order-in-Appeal Air C.Cus.I.No. 69/2021 dated 15.02.2021 passed by the Commissioner of Customs (Appeals-I), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. Air Filter Systems **: Appellant**
Module 80, SDF-III, MEPZ-SEZ,
Tambaram, Chennai – 600 045

VERSUS

The Commissioner of Customs **: Respondent**
Chennai-VII Commissionerate
Air Cargo, Meenambakkam

<u>APPEARANCE</u>:

Shri Ramesh Elumalai, Advocate for the Appellant

Ms. K. Komathi, Authorized Representative for the Respondent

<u>CORAM</u>:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 41678 / 2021

DATE OF HEARING: 13.07.2021

DATE OF DECISION: 13.07.2021

Order :

The above appeal is filed by the assessee against the Order-in-Appeal Air C.Cus.I.No. 69/2021 dated 15.02.2021 passed by the Commissioner of Customs (Appeals-I), Chennai.

2.1 At the threshold, Shri Ramesh Elumalai, Learned Advocate appearing for the appellant, *inter alia* submitted that the appellant had filed Bill-of-Entry No. 2004980 dated 18.04.2020 and Bill-of-Entry No. 2005050 dated 24.04.2020 for import of "N95 Respirator Mask (RC016)" classifying the goods under CTH 90200000 at 'Nil' rate of Basic Customs Duty and Social Welfate Surcharge and 12% IGST under Customs Notification No. 01/2017 Integrated Tax (Rate) dated 28.06.2017; that it was later understood that the impugned goods were correctly classifiable under CTH 6307.90 at 5% IGST vide Sl. No. 224 (SC-I) of Notification No. 01/2017 (Rate) ibid.; that thereafter, the appellant approached the Deputy Commissioner (MEPZ-SEZ) for re-assessment of the subject two Bills-of-Entry for appropriate classification, who vide letter dated 18.11.2020 informed that unless the order of assessment is modified/revised by taking recourse to the appropriate proceedings under Section 128 of the Customs Act, 1962, the claim for refund of excess paid IGST cannot be considered; that the First Appellate Authority vide order impugned herein rejected their first appeal *inter alia* stating that the appellant had not produced any of the original import assessment documents before him and that there is no provision under SEZ Rules, 2006 read with SEZ Act, 2005 to make amendment/change the classification of the goods cleared under DTA sales from SEZ without challenging the original import assessment; that aggrieved by the same, the assessee has preferred the present appeal before this forum.

2.2 He prayed to set aside the impugned Order-in-Appeal and to direct the Original Authority to re-assess the Bills-of-Entry No. 2004980 dated 18.04.2020 and Bill-of-Entry No. 2005050 dated 24.04.2020 by adopting the classification of the item under CTH 6307 9020.

3. Ms. K. Komathi, Learned Departmental Representative appearing for the Revenue, agreed to *de novo* adjudication by the Original Authority.

4. I find that there is no dispute as regards classification is concerned and it was based on the wrong classification of the appellant that prompted it to seek re-

assessment of the Bills-of-Entry, which request, according to me, is very much correct. Therefore, the direction of the Adjudicating Authority to get the original order modified by resorting to Section 128 ibid. was uncalled for. However, even the Learned Departmental Representative agreed to the request of the Learned Advocate for the appellant for remanding the issue for re-assessment. It is not as though the appellant did not seek re-assessment even before the Adjudicating Authority; the Authority did not discharge his responsibility, but rather directed the appellant to file an appeal.

5. In view of the above and considering the request of both parties, the impugned order is set aside and the matter is remanded to the file of the Adjudicating Authority who shall pass an appropriate speaking order in accordance with law, after affording reasonable opportunities to the appellant. All the contentions are left open.

6. The appeal is allowed by way of remand.

(Operative part of the order pronounced in open court)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd