IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

Appeal No.C/41906/2015

[Arising out of C.No.VIII/48/03/2014-Cus. Pol. dt. 8.7.2015 passed by the Additional Commissioner of Central Excise, Chennai-I]

Piramal Enterprises Ltd. — Appellant

Versus

Commissioner of Central Excise, Chennai — Respondent

Appearance:

Shri Mehul Jivani, C.A
For the Appellant

Shri B. Balamurugan, AC (AR)
For the Respondent

CORAM:

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing/decision : 30.03.2017

FINAL ORDER No. 40550/2017

Appellant has preferred appeal against letter 8.7.2015 of Additional Commissioner addressed to the Asst. Commissioner of Central Excise, 'A' Division, Chennai-I Commissionerate directing that the decision of Commissioner rejecting the extension of warehousing permission for Rhodium Octonate Dimer imported in 2008 and Solvias Ligand SL-M004-1 imported in 2001 may be intimated to the assessee immediately. In consequence, Superintendent of Central Excise, A-1 Range, Office of the Asst. Commissioner of Central Excise, 'A' Division conveyed to the appellants vide letter OC NO.276/2015 dt. 09.07.2015 as follows :

> "Sub : 100% EOU – Request for extension of Warehousing period and permission to re-export of raw materials – Request for payment of Appropriate duties along with interest – reg."
>
> Please refer your application submitted before the Commissioner of Central Excise, Chennai-1 requesting extension of ware-housing period and permission to re-export Rhodium Octonate Dimer imported in 2008 and Solvias Ligand SL-M004-1 imported in 2010 & 2011.
>
> Your request for extension of ware-housing period and permission to re-export Rhodium Octonate Dimer imported in 2008 and Solvias Ligand SL-M004-1 imported in 2010 & 2011 has been rejected by the Commissioner (Copy enclosed).
>
> As per Section 61 of the Customs Act, 1962, if the other goods (i.e.) raw materials/inputs/consumables are not used in the manufacture of export goods within 3 years from the date of warehousing, the unit is required to pay all the appropriate Customs & Central Excise duties along with applicable interest.
>
> In this regard, you are hereby requested to pay the appropriate Customs & Central Excise duties along with applicable interest on the above said Rhodium Octonate Dimer and Solvias Ligand SL-M004-1 immediately and submit the copy of challan to this office. If you fail to pay the duties a/w applicable interest, further necessary recovery proceedings will be initiated warranting levy of equal penalty."

2. Aggrieved by this communication, appellants have come before this forum in appeal.

3. Today when the matter came up for hearing, Shri Mehul Jivani, ld.Consultant referred to his affidavit dt. 16-12-2006 submitted before Tribunal in an earlier hearing and submits that the issue concerns remaining unused quantity of Rhodium Octonate Dimer imported vide Bill of Entry No.672894 dt.

07.08.2008 for manufacture of export of finished goods for a specified project (FCI-1315) and remainder of "Solvias Ligand SI-M004-1" imported vide Bill of Entry No.315845 dt. 09.10.2010. As the project itself having being stopped, items remained unutilized. Although the said goods had been warehoused, it appears that no permission was sought for extension of warehousing period till 27.02.2013 when the appellants made such request and also sought for permission to re-export the balance stock of the aforesaid materials. Appellant's grievance is that subsequent to this request in a number of reminders they have not been given an early reply. They had even met the Chief Commissioner and other officers of the department in this connection. Ld. Consultant submits that without assigning any reason, they were informed of the decision of the Commissioner rejecting the request for extension of warehousing period and permission to re-export the goods. The grievance of the appellant is that such decision was communicated to them without giving any reasons thereof and without giving opportunity to be heard in person or through written representation. He relies on the judgment of Hon'ble High Court of Mumbai in *Team Aviation India Pvt. Ltd. Vs UOI* - 2013 (287) ELT 36 (Bom.) wherein in a similar issue, the Hon'ble High Court allowed the writ petition and directed the authorities to pass fresh order in accordance with law after furnishing the appellants therein an opportunity of being heard. The consultant also relies on the following decisions :-

(1) CCE Ahmedabad Vs Wipro Ltd.
2006 (195) ELT 29 (Tri.-Mumbai)

(2) Gujarat Ambuja Cement Ltd. Vs CCE Chandigarh
2006 (197) ELT 39 (Tri.-Del.)

(3) Bhagwati Gases Ltd. Vs CCE Jaipur-I
2008 (226) ELT 468 (Tri.-Del.)

4. On the other hand, Shri B. Balamurugan, Ld. A.R for Revenue refers to the letter dt. 23.09.2016 submitted in court, in response to certain clarifications raised by the Bench on an earlier occasion, wherein, *inter alia,* it has been informed that appellant had suo moto destroyed the goods on 09.09.2015 without the satisfaction of the bond officer and that a Show Cause Notice No.11/2016 dt. 17.08.2016 has been issued by the Asst. Commissioner, 'A' Division demanding duty of Rs.1,55,63,903/- being the import duty on the aforesaid unused Rhodium Octanoate Dimer & Salvias Lignad kept beyond the re-warehousing period and apparently suo moto destroyed by the appellant.

5. Heard both sides and have gone through the facts of the case.

6. In my view, the first aspect to be decided is whether present appeal is maintainable in terms of Section 129A of the Customs Act, 1962. The relevant portion of said section 129A is reproduced herein below :-

> **SECTION 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 Principal Commissioner of Customs or Commissioner of Customs as an adjudicating authority;
>
> (b) an order passed by the Commissioner (Appeals) under section 128A;
>
> (c) an order passed by the Board or the Appellate Commissioner of Customs under Section 128, as it stood immediately before the appointed day;

(d) an order passed by the Board or the Principal Commissioner of Customs or Commissioner of Customs, either before or after the appointed day, under section 130, as it stood immediately before that day :

7.1 Indubitably, the appellant has come in appeal against a letter of an Additional Commissioner of Central Excise dated 08-07-2005 conveying that their request for extension of warehousing period has been rejected by the Commissioner. It is no way a decision or order passed by the said Commissioner as an Adjudicating Authority or by the Commissioner (Appeals) under Section 129A ibid.

7.2 This Tribunal is a creature of statute and has therefore to act clearly within its bounds. Hence an appeal against the impugned letter that is not recognized vide the provisions of Section 129A ibid cannot be entertained by this Tribunal.

7.3 Appeal therefore will fail the test of maintainability itself.

7.4 In any case, on the disputed issue a fresh SCN has been issued by the department. Thus the appellant is at liberty to come back after culmination of proceedings thereat, if felt necessary, at the appropriate time, subject to such appeal being within the ambit of Section 129A ibid.

7.5 Appeal is therefore dismissed as not maintainable.

7.6 Department is however directed to adjudicate the above SCN No.11/2016 dt. 17.08.2016 giving full opportunity to the appellant to present its case. It goes without saying that department shall provide sufficient opportunity to the appellant to present its case. Appellant to also be provided with documents and test reports, if any, relied upon in the matter.

(Dictated and pronounced in open court)

04/04/2017

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

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Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति/Certified True Copy
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अपील अधिकरण/(CESTAT)
चेन्नै/Chennai