CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

REGIONAL BENCH – COURT NO. IV

Excise Miscellaneous Application No.40071 of 2019
&
Excise Appeal No. 00488 of 2012-DB

(Arising out of Order-in-Appeal Nos.01 to 27/2012 dated 31/08/2012 passed by the Commissioner of Central Excise (Appeals), Salem

Commissioner of Central Excise,
No.1, Foulks Compound
Anai Medu, Salem 636 001 **: Appellant**

VERSUS

ITC Ltd
Village: Thekkampetty
Post: Vivekanandapuram, Mettupalayam,Distt:
Coimbatore, Tamil Nadu. **: Respondent**

WITH

Excise Miscellaneous Application No.40072 of 2019
&
Excise Appeal No. 00492 of 2012-DB

(Arising out of Order-in-Appeal Nos.28 to 32/2012 dated 28/09/2012 passed by the Commissioner of Central Excise (Appeals), Salem

Commissioner of Central Excise,
No.1, Foulks Compound
Anai Medu, Salem 636 001 **: Appellant**

VERSUS

ITC Ltd
Village: Thekkampetty
Post: Vivekanandapuram, Mettupalayam,Distt:
Coimbatore, Tamil Nadu. **: Respondent**

AND

Excise Appeal No. 40377 of 2013-DB

(Arising out of Order-in-Appeal No. 40/2012 dated 28/12/2012 passed by the Commissioner of Central Excise (Appeals), Salem

Commissioner of Central Excise,
No.1, Foulks Compound
Anai Medu, Salem 636 001 **: Appellant**

VERSUS

ITC Ltd
Village: Thekkampetty
Post: Vivekanandapuram, Mettupalayam,Distt:
Coimbatore, Tamil Nadu. **: Respondent**

APPEARANCE:

Ms. K.Komathi, Authorised Representative for the Appellant

Shri Mani Shankar, Sr. Advocate for the respondent

CORAM:

HON'BLE SHRI C J MATHEW, MEMBER (TECHNICAL)
HON'BLE SHRI P DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NOs. 41246-41248 / 2020

DATE OF HEARING: 11/12/2019

DATE OF PRONOUNCEMENT 18/11/2020

Per: C J Mathew

In these appeals, arising from order-in-appeal no. 01 to 27/2-12-Cus dated 31st August 2012, order-in-appeal no. 28 to 32/2012 dated 28/09/2012 and order-in-appeal no. 40/2012 dated 28/12/2012 of Commissioner of Central Excise (Appeals), Salem, the dispute pertains to 'end-use certificates' that were to be obtained from the jurisdictional Superintendent of Central Excise for submission to the customs authorities as evidence of compliance with the notification no. 21/2002-Cus dated 1st March 2002 availed on imported goods. During the period from 2005-10, the appellant had imported 'waste paper' which was, thereafter, segregated into fibrous and non-fibrous materials as 'paper board' required the former. The concessional rate of duty under notification no. 21/2002-Cus dated 1st March 2002 is contingent upon use of 'imported goods' in the manufacture of specified products and the 'end-use certificates' issued to them was limited to 'waste paper' of fibrous material that was actually deployed in the production process. Apprehending the consequences of differential duty liability arising therefrom, the certificates were themselves challenged before the first appellate authority. On a former occasion, the Tribunal had upheld the order of the first appellate authority that such certification, to the extent of detriment, would require to be preceded by hearing accorded to the assessee and had remanded the matter back for compliance. The importer had, thereafter, sought intervention of the first appellate authority who directed the original authority to issue appropriate 'end-use certificate' and it is against that direction that the present appeals of Revenue are before us.

2. Learned Authorised Representative contends that the order of the first appellate authority is not consistent with the scheme of exemption under the said notification and that reliance placed on the practices approved by the Ministry of Environment and Forests, Government of India is irrelevant. He also contended that the 'end-use certificate' were mere reflection of the facts of actual utilisation that did not warrant interference by the first appellate authority.

3. Learned Counsel for the respondent submitted that the consequences of the 'end-use certificate' would be differential duty liability and, hence, the facts would need to be settled before such consequences became a reality.

4. The issue in question pertains to notification no. 21/2002-Cus dated 1st March 2002 that entitled the impugned goods to concessional rate of duty subject to fulfilment of post-importation condition of production of 'end use' certification. It is not in dispute that the quantity of goods consumed in the manufacturing process of the respondent is restricted to the fibrous material with the remaining disposed off in the market. The 'end-use certificate' is not entirely incorrect in stating this fact. Moreover, the 'end-use certificate', by itself, is not a demand for differential duty. That is a matter to be adjudicated upon by the competent authority empowered under Customs Act, 1962 which is neither the jurisdictional Superintendent of Central Excise nor the Assistant Commissioner/Deputy Commissioner of Central Excise and the first appellate authority, a Commissioner of Central Excise (Appeals), save exceptions, is not jurisdictionally empowered to decide on assessment, including recovery of duty, by the 'proper officer' of customs at the place of importation. From the facts on record, it would appear that such convergence of appellate jurisdiction is non-

existent. The decision of the first appellate authority directing the issuance of 'end-use certificate" in a proper manner is tantamount to deciding upon the liability for differential duty forgone under Customs Act, 1962 at the time of import which is patently out of jurisdiction. The respondent herein is required to present the 'end-use certificate' to the 'proper officer' of customs and it is for that competent authority to decide on the completeness or any deficiency thereof therein. The respondent herein is also not deprived of its rights to marshal evidence and offer justifications before the 'proper officer' of customs.

5. In the circumstances, the initiation of litigation on the part of the respondent herein is premature. The Tribunal had directed that the respondent herein be heard before issue of 'end use certificate' and it was only any non-compliance thereof that could have been within the remit of the impugned proceedings. That does not appear to be so. We, therefore, set aside the impugned order and direct the respondent to submit itself to the process of assessment before the

competent authority. The miscellaneous applications are disposed off and the appeals are allowed on the above terms.

(Pronounced in the open court on ***18/11/2020****)*

(P. DINESHA)
MEMBER (JUDICIAL)

(C.J. MATHEW)
MEMBER (TECHNICAL)

ksr

	DRAFT			Remarks
	I	II	III	
Date of dictation	11.12.2019			
Draft Order - Date of typing	11.12.2019			
Fair Order Typing	11.12.2019			
Date of numbering and date of dispatch	11.12.2019			