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

C/148/2010

(Arising out of Order-in-Appeal No. 1548/2009 dated 18.12.2009 passed by the Commissioner of Customs (Appeals), Chennai)

M/s. Techno Doors Pvt. Ltd. : Appellant

Vs.

CC (Airport & Cargo), Chennai : Respondent

Appearance

Shri G. Derrick Sam, Advocate,
for the appellant

Shri B. Balamurugan, AC (AR)
for the respondent.

CORAM :

Hon'ble Ms. Sulekha Beevi, Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/Decision: **04.10.2017**

FINAL ORDER No. 42350 **/2017**

Per Bench

The brief facts of the case are that M/s. Techno Doors Pvt. Ltd., the appellant herein have filed an appeal to the Commissioner (Appeals) against the assessment order in respect of Bill of Entry No. 790870 dated 20.02.2009, on the ground that the goods covered under the said Bill of Entry were assessed based on higher freight amount adopted by the department. The said appeal was rejected as not maintainable vide the impugned order dated 18.12.2009, interalia on the ground that the appellant cannot be said to have grievance over the assessment order that was passed on the inputs furnished by him. Aggrieved, appellants filed this appeal before this forum.

2. Today when the matter came up for hearing, various submissions were made by the Ld. Advocate, Shri G. Derrick Sam, which can be summarised as under:-

i) The Bills of Entry are also appealable in nature for the purpose of deciding the appeal on merits under Section 128 of the Customs Act, 1962. He relies upon the ratio of the Tribunal decisions as under:-

a) *CIPLA Ltd. Vs. CC, Indore*
2017 (348) ELT 579 (Tri.-Del.)

b) *Ashok Leyland Ltd. Vs. CCE, Chennai*
2004 (173) ELT 518 (Tri.-Chen.)

c) *Bayshore Glass Trading Pvt. Ltd. Vs. CC, Kolkata*
2002 (148) ELt 1243 (Tri.- Kol.)

d) *Khemka Travels Vs. CC*
1992 (57) ELT 458 (Tri.-Del.)

ii) They had declared the freight as EUR 3900. However, the department taking note of the freight of subject goods as 10648.34 in Airway Bill MAWB No. 02042710021 dated 13.02.2009, have added miscellaneous charges of EUR 6748.34.

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iii) According to them, as per the Customs Valuation Rules, only 20% of the FOB value is to be considered for the purpose of freight in the assessable value. On this basis only they had declared the freight as EUR 3900. Thus they are aggrieved by the addition of 6748.34 EUR by the department during the assessment of the Bill of Entry as miscellaneous charges. This being so, they are fully justified to file an appeal on merits before the Commissioner (Appeals) under Section 128 of the Act.

iv) Hence, summarily rejection of the appeal by the Commissioner (Appeals) is not legally correct.

3. On the other hand, on behalf of the department, Ld. AR Shri B. Balamurugan, AC, submits that it is not clear from the appeal papers whether the miscellaneous charges of EUR 6748.34 had been declared by the appellants themselves while filing the Bill of Entry. The Bill of Entry with the declared values having been accepted by the assessing authority, the appellant cannot have any grievance against the same. Further, the appellants have not produced any proof of any protest lodged by them or any application for re-assessment. In such circumstances, the Commissioner (Appeals) was correct in rejecting the appeal.

4. Heard both sides and have gone through the facts on record.

5.1 Section 128 of the Customs Act 1962, provides for an appeal to be made to the Commissioner (Appeals) by any person "aggrieved by any decision or order passed under this Act, by an

Customs, Excise & Service Tax Appellate Tribunal officer of Customs, lower authority in rank than the Commissioner of Customs". The important takeaway from this provision, is that the person filing such an appeal should do so against a decision passed by the Customs and the person should be aggrieved by such a decision.

5.2 Indubitably, going by the ratio of the decisions cited by the Ld. Advocate, the assessed Bill of Entry is definitely an assessment order which can be appealed against to the Commissioner (Appeals). However, for justifying such an appeal, there should be grievance caused to the importer by way of assessment done in the Bill of Entry. It is incredulous to state, as Ld. Advocate has submitted that he has entitled to file an appeal even if he has grievance against his own declaration.

5.3 From the facts on record, it is not forthcoming whether at the stage of filing the Bill of Entry, the appellant had declared the miscellaneous charges as EUR 6748.34 or whether the same had been added by the assessing officer. The appellant has also not filed the copy of the check list, filed along with the Bill of Entry to ascertain this aspect.

5.4 In the circumstances, we consider it appropriate to remand the matter back to the Commissioner (Appeals) to ascertain whether the Bill of Entry was indeed assessed based on higher freight amount adopted by the department as claimed by the Ld. Advocate, whether the miscellaneous charges were declared by the appellant or were otherwise added by the assessing officer in the course of assessment. In case there has been no modification of the declared values and freight amounts etc., declared by the appellants while filing the Bill of Entry, there cannot be any grievance against the assessment of the Bill of Entry. However, in case higher freight amount/miscellaneous charges have been added by the assessing officer, the Commissioner (Appeals) will consider the matter on merits.

6. Appeal disposed of by way of remand.

(Order dictated and pronounced in the open Court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

Sulekha Beevi
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

BB

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