CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Single Member Bench - Court No. – I

Customs Appeal No 30280 of 2019

(Arising out of **Order-in-Appeal** No.VJD-CUSTM-PRV-APP-166-18-19, dated 23.01.2019 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Coromandel International Ltd., .. **APPELLANT**
No. 1-2-10, Sardar Patel Road,
Coromandel House, Secunderabad,
Telangana – 500 003.

VERSUS

Commissioner of Customs, .. **RESPONDENT**
Central Excise & Service Tax,
Guntur
P.B.No. 331, C.R.Building,
Kannavarithota, Guntur,
Andhra Pradesh – 522 004.

WITH

Customs Appeal No 30281 of 2019

(Arising out of **Order-in-Appeal** No.VJD-CUSTM-PRV-APP-153-18-19, dated 31.12.2018 passed by Commissioner of Central Tax & Customs (Appeals), Guntur)

Coromandel International Ltd., .. **APPELLANT**
No. 1-2-10, Sardar Patel Road,
Coromandel House, Secunderabad,
Telangana – 500 003.

VERSUS

Commissioner of Customs, .. **RESPONDENT**
Central Excise & Service Tax,
Guntur
P.B.No. 331, C.R.Building,
Kannavarithota, Guntur,
Andhra Pradesh – 522 004.

WITH

Customs Appeal No 30284 of 2019

(Arising out of **Order-in-Appeal** No.VJD-CUSTM-PRV-APP-167-18-19, dated 23.01.2019 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Coromandel International Ltd., .. **APPELLANT**
No. 1-2-10, Sardar Patel Road,
Coromandel House, Secunderabad,
Telangana – 500 003.

VERSUS

Commissioner of Customs, .. **RESPONDENT**
Central Excise & Service Tax,
Guntur
P.B.No. 331, C.R.Building,
Kannavarithota, Guntur,
Andhra Pradesh – 522 004.

AND
Customs Appeal No 30286 of 2019

(Arising out of **Order-in-Appeal** No.VJD-CUSTM-PRV-APP-168-18-19, dated 23.01.2019 passed by Principal Commissioner of Central Tax & Customs (Appeals), Guntur)

Coromandel International Ltd., .. **APPELLANT**
No. 1-2-10, Sardar Patel Road,
Coromandel House, Secunderabad,
Telangana – 500 003.

VERSUS

Commissioner of Customs, .. **RESPONDENT**
Central Excise & Service Tax,
Guntur
P.B.No. 331, C.R.Building,
Kannavarithota, Guntur,
Andhra Pradesh – 522 004

Appearance
Shri Praveen Nair, Advocate for the Appellant.
Shri N. Bhanu Kiran, Assistant Commissioner for the Respondent.

Coram: HON'BLE Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. A/30797-30800/2019

Date of Hearing:16.10.2019
Date of Decision:16.10.2019

[Order per: P.V. SUBBA RAO]

1. All these appeals are filed by the appellant on the same issue and hence are being disposed of together. The appellant is a manufacturer of fertilisers and imports inputs in bulk for manufacture of fertilisers. If they clear the goods within time and thereby not making the ship wait for too long they get a discount from their overseas suppliers called as "dispatch earnings". The amount of dispatch earnings is not known when they file the bill of entry because the goods are not yet cleared and the ship released. They come to know of this discount much later. The appellant has paid customs duty as applicable on their entire value at the time of clearance of the goods. Subsequently, when they earned the "dispatch earnings" from their overseas suppliers for clearing the goods well in time and thereby freeing vessel, they filed refund applications seeking the refund of the differential customs duty by revising the transaction value reckoning the dispatch earnings.

2. Their applications for refund were rejected by the original authority and such rejection was upheld by the First Appellate Authority on the ground that once BoE has been assessed and such assessment has not been challenged before the First Appellate Authority no application for refund can be filed as held by the Hon'ble apex court in the case of Priya Blue Industries Ltd., [2004 (172) ELT 145 – SC]. Aggrieved by these orders, the present appeals have been filed on the following grounds:

a) the impugned order is unfair and unjust and erroneous

b) under self assessment for refund no appeal can be filed as there is no order of assessment to be appealed against.

c) under section 17 of the Customs Act, 1962 (as amended) assessment is done by the assessee themselves under the self assessment scheme and there is no mechanism to challenge such self assessment before the Commissioner (Appeals). Therefore the ratio of the Hon'ble Apex Court in the case of Priya Blue Industries (supra) which was passed in the context of the earlier legal position where an assessment had to be done by the officer does not hold good in their case. They relied on the judgments of the Hon'ble High Court of Delhi in the case of Aman Medical Products Vs Commissioner [2010 (250) ELT 30] and Micromax Informatics Ltd., [2016 (375) ELT 446-Del] in which the Hon'ble High Court distinguished the judgment of the Hon'ble Apex Court in the case of Priya Blue Industries (supra) in view of the revised legal provision for assessment. Learned Counsel also submits that this Bench, in the case of Hindustan Petroleum Corporation Ltd., in customs appeal no. 30274/2019 decided vide Final Order no. A/30740/2019 held that the judgments of the Hon'ble Apex Court in the case of Priya Blue Industries (supra) and Flock India Pvt Ltd., [2000 (120) ELT 285 (SC)] do not apply in the light of the amendments to the customs act and the judgments of the Hon'ble High Court of Delhi in the case of Aman Medical Products (supra) and Micromax Industries Ltd., (supra) prevail.

3. Learned DR reiterates the findings of the lower authorities. He also submits that in the case of ITC Ltd., as reported in [2019-TIOL-418-SC-CUS], the Larger Bench of the Supreme Court has held that an assessment under Section 17 of the Customs Act or under the Central Excise Act must be challenged before a refund application must be filed without which no refund can be sanctioned. The Hon'ble Larger Bench of the Supreme Court

has upheld the judgments of Priya Blue (supra) and Flock India (supra) even after self assessment has been introduced under Section 17. It has been held that the self assessment order is also an assessment order and can be appealed against before the Commissioner (Appeals) and in the absence of any such appeal no refund application can be entertained. Paras 43, 47 and 48 of this judgment are reproduced below:

> 43. As the order of self-assessment is nonetheless an assessment order passed under the Act, obviously it would be appealable by any person aggrieved thereby. The expression 'Any person' is of wider amplitude. The revenue, as well as assessee, can also prefer an appeal aggrieved by an order of assessment. It is not only the order of re-assessment which is appealable but the provisions of Section 128 make appealable any decision or order under the Act including that of self-assessment. The order of self-assessment is an order of assessment as per section 2(2), as such, it is appealable in case any person is aggrieved by it. There is a specific provision made in Section 17 to pass a reasoned/speaking order in the situation in case on verification, self-assessment is not found to be satisfactory, an order of re-assessment has to be passed under section 17(4). Section 128 has not provided for an appeal against a speaking order but against "any order" which is of wide amplitude. The reasoning employed by the High Court is that since there is no lis, no speaking order is passed, as such an appeal would not lie, is not sustainable in law, is contrary to what has been held by this Court in Escorts (supra).
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> 47. When we consider the overall effect of the provisions prior to amendment and post-amendment under Finance Act, 2011, we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of self-assessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act.
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> 48. Resultantly, we find that the order(s) passed by Customs, Excise, and Service Tax Appellate Tribunal is to be upheld and that passed by the High Courts of Delhi and Madras to the contrary, deserves to be and are hereby set aside. We order accordingly. We hold that the applications for refund were not maintainable. The appeals are accordingly disposed of. Parties to bear their own costs as incurred.

4. I have considered the arguments from both sides and perused the records. As it is now settled by the Larger Bench of the Hon'ble Apex Court in the case of ITC Ltd., (supra) that no refund can be sanctioned without challenging the assessment order whether such assessment is done prior to the amendment to Section 17 of the Customs Act where the assessment had

to be done by the officers post such amendment where the assessment is done under self assessment scheme, I have no option but to hold that the appeals are not sustainable and need to be rejected.

5. The impugned orders are upheld and the appeals are rejected.

(Order dictated and pronounced in open court)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

Jaya