

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 75564 of 2020

(Arising out of Order-In-Appeal No. Cus(Prev)/Kol(CCP)/133/2020 dated 01.01.2020 passed by Principal Commissioner of Customs(Appeals) 3rd Floor, Customs House, 15/1 Strand Road, Kolkata-700001)

M/s. Eastern Traders
163/B. M.G.Road (1st. Floor),
Kolkata – 700 007

: Appellant

VERSUS

Commissioner of Customs (Preventive),
Customs House, 15/1 Strand Road,
Kolkata-700001

: Respondent

APPEARANCE:

Shri H. K. Pandey, Advocate for the Appellant

Shri Ashwini Kr. Choudhary, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.77807/ 2024

DATE OF HEARING / DECISION:05.12.2024

ORDER : [PER SHRI K. ANPAZHAKAN]

M/s. Eastern Traders (herein after referred as the appellant) is a partnership firm and is engaged in the business of export and import under the valid IEC duly issued by the office of the Directorate General of Foreign Trade, Ministry of Commerce and Trade, Govt. of India.

2. During the normal course of business, the appellants exported eight (8) consignments of Stainless Steel Utensils (kitchenware) during the period May and June, 2010 to different importers at Bangladesh. Such exports were through Petra pole Land Customs Station, Petra pole, West Bengal.

3. Investigation was caused with the partner of the appellants and a statement dated 25.08.10 was recorded from the said partner. Further statement was recorded on 23.07.13 with respect to such export details.

4. Subsequently, the appellants were issued with a Show Cause Notice under Sec. 124 of the Customs Act, 1962 read with Rule 16A of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 vide C.No. VIII (10)29/ADC/ADJ/CUS /WB/15-16 dated 6.8.15 alleging, inter alia, that the so exported goods were mis-declared with respect to value of the same with intent to avail undue drawback on such exports, by relying upon the correspondence with M/s, SGS India (P) Ltd. and Customs Intelligence and Investigation Directorate, Dhaka. The Show Cause Notice proposed for confiscation of the goods under Sec. 113 (ii) of the Customs Act, 1962 and imposition of penalty under Sec. 114(iii) and 114AA ibid. Further, proposition has been made for recovery of the drawback amount of Rs. 6,37,278/- under Rule 16 of Drawback Rules, 1995 together with interest under Sec. 75A(2) of the Customs Act, 1962.

5. The said notice was adjudicated by the Ld. Addl. Commissioner of Customs (Prev), C.C. (P), vide Order No. 100/ADC (P)/ CUS WB /16-17 dated 15.12.16, whereby the Ld. Adjudicating authority has ordered for confiscation of the exported goods. He also ordered for recovery of drawback amounting to Rs. 6,37,278/- together with interest. He imposed penalty of Rs. 5 lacs under Sec. 114(iii) and Rs. 1,50,000/- under Sec. 114AA of the Customs Act, 1962 upon the appellants.

6. On appeal, the Ld. Commissioner (Appeals) upheld the demands confirmed in the Order-in-Original. Aggrieved against the impugned Order-in-Appeal 01.01.2020, the appellant has filed this appeal.

7. The Ld. Authorized Representative appearing for the Revenue submitted that the issue involved in these appeals are related to Drawback claims. As per Section 129A of the Customs Act, 1962, this Tribunal has no jurisdiction to deal with the appeals related to drawback matters. Accordingly, he submitted that the appeals are not maintainable

8. Regarding maintainability of the appeals, the appellant fairly conceded that this Tribunal is not empowered to deal with issues related to drawback. Accordingly, he prayed for granting 'Leave' for filing Review Application before the Government of India.

9. Heard both sides and perused the appeal documents.

10. We observe that the Ld. Departmental Representative has raised the issue of maintainability of the appeals before this Tribunal. Thus, before going into the merits of this appeal, it is required to address the issue of maintainability of these appeals. We observe that as per Section 129A of the Customs Act, 1962, this Tribunal has no jurisdiction to deal with the appeals related to drawback matters.

11.1. For the sake of ready reference the said Section 129 A is reproduced 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 10 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 12 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:

Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any

appeal in respect of any order referred to in clause (b) if such order relates to,

- (a) any goods imported or exported as baggage;
- (b) any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India, or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination;
- (c) payment of drawback as provided in Chapter X, and the rules made there under:

11.2. A perusal of proviso (c) to Section 129A reproduced above clearly indicate that this Tribunal has no jurisdiction to deal with appeals related to drawback matters.

12. We observe that this issue has been dealt by the Hon'ble Delhi High Court in the case of *Commissioner of Customs, Air Cargo Export v. Sans Frontiers [2024 (387) E.L.T. 237 (Del.)]* wherein the Hon'ble Delhi High Court has held that Appeal to CESTAT against order of Commissioner (Appeals) with respect to recovery of duty Drawback on exported goods is not maintainable as per Section 129A of Customs Act, 1962. The relevant portion of the said decision is reproduced below:

"60. He submitted that the Revenue had agreed to the jurisdiction of the learned CESTAT to entertain the appeal and in fact, had sanctioned refund of the amount of Drawback pursuant to the order passed by the learned CESTAT. He further submitted that the appeal challenging the order of the learned CESTAT has been filed belatedly only to overcome the argument that the Revenue, by its consent, had agreed to the jurisdiction of the learned CESTAT.

61. We do not agree with the said contention advanced on behalf of the Firm. It is settled law that competence of the Court to try a case goes to the very root of the jurisdiction. The inherent lack of jurisdiction makes the order passed by the Court void in law. There is also no inherent right to file an appeal and the same is granted by the statute. In the absence of any such right, the learned CESTAT being a creature of statute, did not have any jurisdiction to entertain the same. No Court or Tribunal is empowered to usurp jurisdiction, which it does not have. Any order passed by a Tribunal that does not have the jurisdiction to pass such an order, is non

est. The invalidity of such orders can be set up whenever they are sought to be enforced.

62. It is well-settled that the order passed by a Court, which does not have the subject matter jurisdiction to adjudicate the issue, would be a nullity. No consent, waiver or acquiescence can confer jurisdiction upon a Court, which is otherwise barred by the statute. The order, passed by a Court having no jurisdiction, is non est and its invalidity can be set up at any stage and in any proceedings.

...

64. Therefore, even if it is to be assumed that the Revenue had consented to the learned CESTAT hearing the appeal, the defect of lack of jurisdiction cannot be cured."

12.1. We observe that the above decision of the Hon'ble Delhi High Court has been affirmed by the Hon'ble Apex Court as reported in 2024 (20) Centax 172 (S.C.).

13.2. We also find that the same view has also been held by the Hon'ble Delhi High Court in the case of Commissioner of Customs, ACC Export Vs Arihant Overseas [2024 (19) Centax 525 (Del.)], wherein the Hon'ble Delhi High Court has held that in terms of Section 129DD of the Customs Act, 1962, the remedy against such orders is by way of a Revision to Central Government. The relevant portion of the said decision is reproduced below: -

"4. In M/S Sans Frontiers (supra), the Division Bench held that an order passed by a Court which did not have the subject matter jurisdiction to adjudicate the issue would be a nullity. No consent, waiver or acquiescence could confer jurisdiction upon a Court, which jurisdiction was otherwise barred by statute.

5. As per the appellant, in terms of Section 129 (DD) of the Customs Act, 1962 ["the Act"], the remedy of impugning the order was by way of a Revision to the Central Government and an appeal to the Tribunal was not maintainable. Said position is not disputed by learned counsel for respondent who concedes that in terms of Section 129 (DD) of the Act, the remedy was only by way of a Revision and not by way of Appeal to the Tribunal. Learned counsel, however, submits that since the objection was not raised at an appropriate stage, respondent could not approach the Revisional Authority within the time prescribed by the statute. She submits that an opportunity be granted to the respondent to now

file a Revision in terms of Section 129 (DD) of the Act before the Central Government."

12.2. In view of the above discussion and by following the decisions cited supra, we hold that the appeals filed by the appellant against the impugned orders are not maintainable as per Section 129A of the Customs Act, 1962.

13. We observe that the appellant has filed these appeals before the wrong Forum and hence these appeals are not maintainable before this Tribunal. As it is a genuine mistake, we observe that the appellant should not be penalised for filing appeal before the wrong forum. Accordingly, we grant 'leave' to the appellant to file the Revision Applications against the impugned Orders passed by the Commissioner (Appeals) before the Government of India as per Section 129 DD of the Customs Act, 1962, along with condonation of delay.

14. The appeals filed by the appellant are disposed of on the above terms.

(Operative part of the order was pronounced in open court)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)