CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

REGIONAL BENCH - COURT NO. 02

Customs Appeal No. 86714 of 2017

(Arising out of Order-in-Original No. 152/2016-17/Commr./NS-III/JNCHdated 27.02.2017 passed by Commissioner of Customs(NS-III), NhavaSheva)

Commissioner of Customs, NhavaSheva-III .....**Appellant**
Jawaharlal Nehru Custom House,
TalukaUran, Dist. Raigad,
Pin-400707

VERSUS

M/s Enox Overseas Pvt. Ltd. .....**Respondent**
C-5, Hind Saurashtra Industries Estate,
Near Mittal Industrial Estate,
Andheri-Kurla Road, Marol Naka,
Andheri (East), Mumbai-400059

Appearance:

ShriR.K. Dwivedy, Authorized Representativefor the Appellant
ShriJhamman Singh, Advocatefor the Respondent

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINALORDER NO. A/86814 / 2019

Date of Hearing: 06.09.2019
Date of Decision:06.09.2019

Per: S.K. MOHANTY

Heard both sides.

2. Revenue has filed this appeal against the impugned order dated 27.02.2017 passed by the Commissioner of Customs, NhavaSheva.

3. The learned Advocate appearing for the respondent, at the outset, raised the preliminary objection that the appeal before the Tribunal is not maintainable inasmuch as the Committee of Chief Commissioners vide review order dated 21.06.2017 have

directed the Commissioner of Customs for filing of appeal before the Tribunal; whereas, the appeal in the present case was filed before the Tribunal under the signature and seal of the Deputy Commissioner of Customs. Thus, he submits that the appeal is not maintainable in terms of Section 129D of the Customs Act, 1962. To support such stand, the learned Advocate has relied upon the following judgments delivered by the judicial forums:

1. *Sure India-2002 (142) E.L.T. 647 (Tri.-Mumbai)*
2. *Global Talesystem P. Ltd.-2001 (127) E.L.T. 244 (Tri.-Mum.)*
3. *Lucky Biscuit Co., Patna-2004 (165) E.L.T. 605 (Tri.-Kolkata)*
4. *Pradeep Kumar Shyam Sukha-2006 (202) E.L.T. 605 (Tri.-LB)*
5. *Siddharth Petro Products Ltd.-2008 (232) E.L.T. 784 (Guj.)*
6. *Saral Wire Craft Pvt. Ltd.-2015 (322) E.L.T. 192 (S.C.)*
7. *DCM Shriram Consolidated Ltd.-2001 (132) E.L.T. 392 (Tri.-Mumbai)*

4. On the other hand, the learned AR appearing for the Revenue submits that filing of appeal by the Deputy Commissioner of Customs is a mere technicality and thus, the statutory right of appeal cannot be whittled down on procedural irregularities. Accordingly, it is contended that appeal filed by Revenue against the impugned order is maintainable before the Tribunal.

5. Heard both sides and perused the records.

6. We find that the Review Order No. 07/2017-18 dated 21.06.2017 was passed by the Committee of Chief Commissioners, in directing the Commissioner of Customs for filing of appeal before the Tribunal. However, on perusal of the appeal records, we find that instead of the said designated/specified officer, the appeal in this case has been signed and verified by the Deputy Commissioner of Customs. Since, in terms of Section 129D *ibid,* the Committee of the Chief Commissioners have reviewed the matter and directed the concerned officer for filing of appeal before the Tribunal,such direction cannot be considered asempty formality and has to be

strictly adhered to for the purpose of achieving the legislative mandate. We find that in the judgments relied upon by the learned Advocate for the respondent, judicial forums have consistently held that in absence of any specific authority being delegated under the statute, the proper officer who has been entrusted with the job for filing the appeal should only sign the appeal records including the verification memo contained in the appeal memorandum. But in the present case, since the proper officer i.e. Commissioner of Customs has not preferred the appeal by himself in the manner prescribed in the statute, we are of the view that the appeal filed by Revenue cannot be maintained on ground lack of jurisdiction. Accordingly, appeal filed by Revenue is dismissed. However, Revenue is at liberty to file proper appeal as per the mandates of the statute.

(Dictated and pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

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