CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.405

Customs Appeal No. 85036 of 2019

(Arising out of Order-in-Appeal No. 1468 to 1470 (Gr.I) 2018(JNCH)/Appeal-II dated 05.10.2018 passed by the Commissioner of Customs(Appeals), Mumbai-II)

M/s Colorcon Asia P Ltd ....Appellant
Plot No. M-14 To M-18
Verna Industrial Estate
Verna Salcete
Goa, Goa-403722

VERSUS

Commissioner of Customs, ...Respondent
Nhava Sheva-I
Null New Custom House,
Ballard Estate,
Mumbai Maharashtra-400001

APPERANCE:

Shri C.S. Biradar, Advocate for the Appellant
Shri Manoj Kumar, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO. A/87313 / 2019

Date of Hearing: 11.12..2019
Date of Decision: 11.12.2019

PER: AJAY SHARMA

This appeal has been filed challenging the order dated 05.10.2018 passed by the Commissioner of Customs(Appeals), Mumbai-II in Order-in-Appeal No. 1468 to 1470 (Gr.I) 2018(JNCH)/Appeal-II.

2. I have heard learned counsel for the appellant and learned Authorised Representative for the revenue and perused the case records. During the course of arguments learned counsel submitted that the 1st appellate authority i.e. the Commissioner rejected the Appellant's appeal without going into the merits of the matter only on the ground that there is no order of assessment by the proper officer of customs as they were RMS facilitated bills of entry and goods were cleared on the self assessment done by the Appellant and therefore the appeal filed by the Appellant before the Commissioner (Appeals) cannot be sustained under Section 128 of the Customs Act. He further submits that recently the Hon'ble Supreme Court in the matter of ***ITC Ltd. vs. Commissioner of Central Excise, Kolkata-IV; reported in 2019(368) ELT 216(SC)*** has laid down that 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 Hon'ble Supreme Court also observed that 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. Section 128 has not provided for an appeal against a speaking order but against "any order", which is of wide amplitude. He also prayed that in view of the latest legal position the impugned order is liable to be set aside and the matter may be remanded to the learned Commissioner for deciding the Appeal afresh on merits. Learned Authorised Representative on the other hand reiterated the findings recorded in the impugned order.

3. After going through the decision of the Hon'ble Supreme Court in the matter of ***ITC Ltd. (supra)***, I am of the view that the law laid down by the Hon'ble Supreme Court squarely applies on the facts of the case. The language of Section 128 ibid is clear and unambiguous and the reasoning given by the learned Commissioner that since there is no order or decision of any Customs officer, the appeal filed by the appellant cannot be sustained, is erroneous and contrary to law. The learned Commissioner ought to have decided the Appeal on merits. Therefore without going into the merits of the matter, I am setting aside the impugned order and remanding the matter back to the learned Commissioner with a direction to decide the Appeal on merits after affording reasonable opportunity of hearing to the Appellant.

4. The Appeal is therefore allowed by way of remand.

(Order pronounced in the open Court)

(Ajay Sharma)
Member (Judicial)

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