CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 86780 of 2013

(Arising out of Order-in-Appeal No. 20(Gr.IIG)/2013(JNCH)/IMP-19 dt. 29/01/2013 passed by the Commissioner of Customs (Appeals), Mumbai-II)

Polycab Wires Pvt. Ltd. **.... Appellant**
Plot No.74/8 to 11,
Daman Industries Estate Airport Road,
Kadiya, Nani Daman,
Daman 396210.

Versus

Commissioner of Customs(Imports) **.... Respondent**
Jawaharlal Nehru Customs House
Nhava Sheva, Uran,
Raigad 400 707.

WITH

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Appearance:

Shri Vijay Wadivkar, DGM Auth. Representative for the Appellants
Shri Manoj Kumar, Asst. Commissioner(AR) for the Respondents

CORAM:

HON'BLE MR. S.S. GARG, JUDICIAL MEMBER
HON'BLE MR. RAJU, TECHNICAL MEMBER

FINAL ORDER NO. A/85708-85709 / 2020

Date of Hearing: 05/03/2020
Date of Decision: 05/03/2020

Per: S.S. GARG

Appellant have filed these two appeals against the impugned order dt. 29/01/2013 whereby the Commissioner has rejected both the appeals. since the issue involved in both these appeals is identical, both these appeals are disposed of by this common order. For the sake of convenience, the facts in appeal No.C/86780/2013 are taken.

2. Briefly the facts of the present case are that the appellant filed Bill of Entry No.6894652 dt. 22/05/2012 for clearance of goods "Semi Conducting Compound" imported from Republic of Korea. Appellant paid duty amounting to Rs.7,99,483/- under TR-6 Challan No.2003692987 dt. 23/05/2012. The goods being imported from Republic of Korea were eligible to the benefit of the Notification No.123/2011-Cus. dt. 31/12/2011 read with Notification No.187/2009-Cus (NT) dt. 31/12/2009. The goods were assessed under Risk Management System (RMS).

3. Heard both sides and perused the records.

4. Learned representative for the appellant appeared and submitted that the impugned orders are not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submitted

that the Commissioner(Appeals) has wrongly held that the appellant cannot challenge their own assessment order before the Commissioner(Appeals) under Section 128 of the Customs Act. 1962. He also submitted that Commissioner(Appeals) has wrongly relied upon the decisions of the Tribunal which are not applicable because they are related to Central Excise provisions whereas the provisions relating to assessment before clearance of goods are not similar to the one that are enacted under the Customs Act, 1962. He further relied upon the decision of this Tribunal in the case of CC(Imports), Nhava Sheva Vs. Kimitsu Trading India Pvt. Ltd. [Final order No.A/68-74/13-CSTB/C-I dt. 31/12/2012 in appeal No.C/1271/2012-Mum.] while deciding th case of benefit of Notification No.69/2011-Cus dt. 29/07/2011 approved the order of the learned Commissioner(Appeals). He further submitted that the decision of the Apex Court in ITC Ltd. case has settled the position of law.

5. On the other hand, the learned AR appearing for the Revenue defended the impugned.

6. After considering the submissions of both the parties and perusal of the material on record, we find that Commissioner(Appeals) has rejected the appeals only on the ground that the appellant cannot challenge their own self-assessment before the Commissioner(Appeals) under Section 128 of the Customs Act, 1962 because self-assessment is not an assessment. This issue is no more res integra and has been settled by the Hon'ble Apex Court in the case of ITC Limited Vs. CCE, Kolkata-IV [Judgment dt.

18/09/2019 in Civil Appeal No.293294 of 2019] wherein the Hon’ble Apex Court in para 43 has held as under:-

> *43. As the order of selfassessment 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 reassessment which is appealable but the provisions of Section 128 make appealable any decision or order under the Act including that of selfassessment. 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, selfassessment 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).*

7. By following the ratio of the Apex Court decision cited supra, we are of the considered view that the impugned orders are not sustainable in law and therefore we set aside both the impugned orders and remand the matter back to the Commissioner(Appeals) to decide the same on merits after affording an opportunity of hearing to the appellants and after complying with the principles of natural justice.

(Operative part of this order was pronounced
in court on 05/03/2020)

(S.S. GARG)
JUDICIAL MEMBER

(RAJU)
TECHNICAL MEMBER

Raja….