CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Customs Miscellaneous Application (EH) No. 85260 of 2020
(On behalf of Appellant)
Customs Appeal No. 85826 of 2020

(Arising out of Order-in-Original No. S/26-99/ADJ.DRI/Chamunda/2019-20 dated 18.11.2019 passed by Additional Director General (Adjudication), DRI, Mumbai)

M/s. Shree Chamunda Enterprises **Appellant**
333, Tower-B, Kalptaru Crest,
Bhandup (W), Mumbai 400 078.

Vs.

Additional Director General-Mumbai Adj. **Respondent**
New Custom House,
Ballard Estate, Mumbai 400 001.

<u>Appearance:</u>

Shri Anil Balani, Advocate, for the Appellant
Shri Bhushan Kamble, Assistant Commissioner, Authorised Representative for the Respondent

<u>CORAM:</u>

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. **A/85823/2020**

Date of Hearing: 12.10.2020
Date of Decision: 12.10.2020

PER: SANJIV SRIVASTAVA

This appeal is directed against the communication bearing S No S/26-99/ADJ-DRI/Chamunda/2019-20 dated 18.11.2019 of the ADG, Adjudication, DRI, Mumbai. The said communication is reproduced as such below:

<u>RECORD OF PERSONAL HEARING</u>

Show cause Notice No & Date	DRI/MZU/C /INT-45/2019 dated 20.08.2019
Name of Noticee	M/s Narendra Tarachand Purohit (Noticee at S No 1 of above SCN)
Name and Designation of person attending the personal	Shri A S Sahota (Consultant) Authorised representative of

attending the Personal Hearing	above Noticee Sh Narendra Tarachand Purohit (Proprietor of above noticee)

Shri A S Sahota (Consultant) and Shri Narendra Tarachand Purohit (Proprietor) appeared for the personal hearing today and submitted that requests made in their earlier letter dated 18.09.2019 have not been decided and therefore they have not submitted their final written submission. They were informed that necessary direction has been issued to DRI so as to provide copies of non RUDs in this week. It was also informed to them that within 30 days of receipt of such documents, they should make final submission without any further delay. As regards request for testing, it was informed to them that the same was considered and found to be not acceptable, in view of the fact of the case and evidences placed before the adjudicating authority.

	(1)	(2)
Signature	-sd	-sd
Name	Shri A S Sahota	Sh Narendra Tarachand Purohit
Designation	Consultant	Proprietor
Date	18.11.2019	18.11.2019
Contact Details	9869073346, 9082463664	8879798470
Email-id	As.sahota@gmail.com	Narendrapurohit31@gmail.com

Signature, Date, Name & Designation of the Person Representing the Noticee.

-sd/-
(SUBHASH AGARWAL)
ADG, ADJUDICATION,
DRI, MUMBAI

1.2 In the matter the application for condonation of delay in filing the appeal was allowed vide Interim Order No 05/2020 of 14.09.2020.

1.3 Before us the application for early hearing of the appeal has been listed. Arguing for the Applicant learned Counsel for the Appellant submits that since the issue is in respect of the approximately 242 MT of CRGO Steel Sheets/ Coils imported by them during the month of February 2019 through various ports.. The consignments of imported CRGO coil have been placed under seizure, and continue to be in custody of the department. In the matter the show cause notice, has been issued proposing the confiscation of the sized goods etc., on various grounds and relying on the various evidences as stated in the show cause notice. Now during the course of personal hearing in the matter adjudicating authority has passed this order, by which they are aggrieved. Since the matter is in case of the live consignment which is still under seizure, and nearly twenty months have elapsed since the goods were imported his request for the early hearing should be considered and allowed. Learned Authorized Representative appearing for the revenue submits that the communication under appeal is not an order and hence the appeal itself is not maintainable.

1.4 Since the matter is in respect of the seized consignment which continue to be in the custody of the department on the date of hearing we find enough merits in the submissions of the counsel and allow the application for early hearing.

1.5 Since the issue is in very narrow compass with the consent of both sides the appeal is taken up for hearing simultaneously.

2.1 We have heard Shri Anil Balani, Advocate for the Appellant and Shri Bhushan Kamble, Assistant Commissioner, Authorized Representative for the revenue.

2.2 Arguing for the Appellant learned Counsel submits that-

- The communication under consideration is an order determining their right to seek the test of the consignments for determining whether the goods imported by them confirm to IS 3024:2015 and whether the sheets imported by them are of prime quality or secondary.
- The entire case against the importer is that the goods imported by him are imported against the mill certificates which are not proper and do not reflect the correct position in respect of the goods imported. Since these mill certificates issued by the foreign supplier are improper the imported goods have been placed under seizure.

- In order to contest the show cause notice, and establish that the goods imported by them are in accordance with the said BIS standard they had requested for the testing of the goods in the BIS approved laboratory, which has been rejected by the adjudicating authority without assigning any reason for the same as per the record of personal hearing dated 18.11.2019. Since this record of personal hearing is an order passed by the adjudicating authority determining the their right to get the goods tested and lead the evidence in the matter the appeal against the same lies to this tribunal.
- Since this order has been passed without assigning any reason and without application of mind the same needs to be set aside and their request for testing should be allowed so that no prejudice is caused to them in the matter.

2.3 Arguing for the revenue learned Authorized Representative submits that the communication is an internal record made by the adjudicating authority during the course of hearing and cannot be considered as an order against which the appeal is maintainable before this tribunal. Further it is also not forthcoming whether this communication was ever issued to the appellant at any time. Since this communication is not an order of the adjudicating authority referred to in section 129A of the Customs Act, 1962, the appeal is not maintainable and needs to be dismissed.

3.1 We have considered the entire records of the matter and the arguments made during the course of hearing by both the sides.

3.2 Section 129 A (1) (a) of the Customs Act, 1962 reads as follows:

"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;"

3.3 Undoubtedly in the present case the ADG, Adjudication, DRI Mumbai, was acting as adjudicating authority, and has made this record of personal hearing as adjudicating authority. Also by stating *"As regards request for testing, it was informed to them that the same was considered and found to be not acceptable, in view of the fact of the case and evidences placed before the adjudicating authority."*, he has made a determination and have rejected the request for testing of the consignment made by the appellant. Any such determination during the course of adjudication by the adjudicating authority is an order passed by the passed by the adjudicating authority and is within the purview of section 129A(1)(a) against which the appeal lies to this tribunal.

3.4 Following has been held by the Hon'ble Apex Court in the case of Saheli Leasing Industries [2010 (253) ELT 705 (SC)], while disposing of the matter against the order of High Court disposing of the other side in a precursory manner.

"10. However, the Division Bench in its wisdom thought it fit to dispose of the appeal as under:- "Admitted facts are that the appellant has filed return showing loss and the income is also assessed as "NIL income". When the return was shown as loss as well as assessment of income is also NIL, no penalty under Section 271 (1) (c) of the Income Tax Act is attracted. No case is made out for admission of the appeal. The appeal stands dismissed at admission stage.

Sd/- Judge Sd/- Judge"

11. Considering the important question of law and its wide repercussions, it was least expected from the Division Bench of the High Court to have dealt with the issue more seriously, keeping in mind the question of law that was being answered by it."

3.5 Further court went on to state as follows:

"4. This Court, time and again, reminded the courts performing judicial functions, the manner in which judgments/orders are to be written but, it is, indeed, unfortunate that those guidelines issued from time to time are not being adhered to.

5. No doubt, it is true that brevity is an art but brevity without clarity likely to enter into the realm of absurdity, which is impermissible. This is what has been reflected in the impugned order which we would reproduce hereinafter."

3.6 In view of the said decision of the Hon'ble Supreme Court we are not in position to agree with the manner in which adjudicating authority has dealt with the request for the test made by the Appellant/ Noticee. In our view matter needed to be considered in more serious manner and proper reasons to be assigned, because in any judicial/ quasi judicial proceedings, the effected party has the right to lead the evidence in the manner which suits to him best. Any order which is contrary to this basic principle has to be more considered and reasoned.

4.1 In view of discussions as above we set aside the sentence *"As regards request for testing, it was informed to them that the same was considered and found to be not acceptable, in view of the fact of the case and evidences placed before the adjudicating authority." appearing in the record of personal* hearing dated 18.11.2019 and remand the matter to adjudicating authority for reconsideration of the request made by the appellant for testing of the consignments. Thus appeal is allowed and matter remanded to the adjudicating authority for reconsideration to this extent.

4.2 In result the application for early hearing and also the appeal is disposed off.

(Order pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

tvu