# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. III

**Custom Appeal No. 86295 of 2020**

(Arising out of Order-in-Appeal No. 1070 (Gr.-IV)/2020 (JNCH)/Appeals-II dated 18.09.2020 passed by the Commissioner of Customs, NS-III & NS-II, JNCH, (Appeals), Nhava Sheva)

**Commissioner of Customs, Nhava Sheva-III .... Appellant**
Jawaharlal Nehru Custom House, Nhava Sheva,
Dist. –Raigad, Maharashtra-400707

Versus

**M/s Agsons Agencies (I) Pvt. Ltd. .... Respondent**
65, IDC Mehrauli Road,
Gurugram, Haryana-122001

**WITH**

**Custom Appeal No. 86296 of 2020**

(Arising out of Order-in-Appeal No. 1071 (Gr.-IV)/2020 (JNCH)/Appeals-II dated 18.09.2020 passed by the Commissioner of Customs, NS-III & NS-II, JNCH, (Appeals), Nhava Sheva)

**Commissioner of Customs, Nhava Sheva-III .... Appellant**
Jawaharlal Nehru Custom House, Nhava Sheva,
Dist. –Raigad, Maharashtra-400707

Versus

**M/s Himgiri Buildcon & Industries Ltd. .... Respondent**
Khata No. 88/123, Rectangle No. 8,
Village-Begampurkhatola, Gurugram, Haryana-122002

Appearance:

Shri S. K. Hatangadi , Authorized Representative for the Appellants

Shri Dipenn S. Jagyari, Advocate for the Respondents

**CORAM:**

**HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**
**HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)**

**FINAL ORDER NO. A/86048-86049/2022**

Date of Hearing: 25.10.2022

Date of Decision: 25.10.2022

***Per: Dr. Suvendu Kumar Pati***

We have heard arguments from both sides.

2. Over a series of protracted litigations and after intervention of the Hon'ble Bombay High Court concerning amendment to certain Bills of Entry sought by the respondent Importer, whose High Sea Sale to the other respondent could not get materialized, respondents got the following order passed by the Commissioner (Appeals), Mumbai Zone-II on dated 18.09.2020, which reads:-

*"8. In view of above, I pass the following order:*

*(i) Amendment in the impugned Bills of Entry is allowed. Original Authority / OA is directed to amend the B/Es accordingly.*

*(ii) Original Authority / OA is directed to take decision on the request of the appellants for provisional release / conditions, if any, of provisional release of the subject goods, in consultation with Directorate of Revenue Intelligence Vapi/seizing / investigating authority. The appellants may be heard before passing any order. Since it is a case of live consignment, OA is directed to complete the process within 6 weeks from the date of receipt of this order.*

*9. In view of above, the impugned order contained in letter F. No.S/ 26-Misc.-1197/2019-20 Gr. IV dated 17.03.2020 passed by the Jt. Commissioner of Customes (in situ), Group-IV, JNCH, Nhava – Sheva is set aside and Appeal No.1062/2020 filed by M/s. Agsons Agencies (I) Pvt. Ltd. is disposed off in above terms.*

*Sd/-*
*(JAGREETI SAIN NEGI)*
*COMMISSIONER OF CUSTOMS (APPEALS)*
*JNCH, NHAVA SHEVA, MUMBAI-II"*

The order was not carried out despite persistent efforts and requests made by the respondent, who approached the Hon'ble Bombay High Court again through Writ Petition (ST) No. 97994/2020, wherein direction was given to the appellant to carry out the Order-in-Appeal passed by the Commissioner of Customs (Appeals) on 18.09.2020 as referred above within 7 days of receipt of the copy of Hon'ble High Court's order. Accordingly, Deputy Commissioner of Customs carried out the said order and informed the respondents herein that with approval of the competent authority, amendments to the Bills of Entries were carried out and goods were directed to be provisionally released on payment of merit rate of duty upon execution of a Bond of Rs. 6.9 crores with Bank Guarantee/security deposit of Rs. 41 lakhs. The respondents duly complied with the said order communicated through two letters of the Deputy Commissioner of Customs and the imported consignments were duly released in favour of the respondents. The said order for amendment to Bill of Entry and provisional release order has not been challenged by the present appellant. What is challenged before us is the order passed by the Commissioner (Appeals) on dated 18.09.2020 that has been executed by the Appellant.

3. As could be noticed from the order passed by the Hon'ble High Court in the Writ Petition (ST) No. 97994/2020, the present appellants have not stated before the Hon'ble High Court on the date of hearing on 22.12.2020 that they have preferred an appeal before the CESTAT moved a stay application (para 20) for

which the Hon'ble High Court directed for compliance of the order passed by the Commissioner (Appeals) that was not being complied with within six weeks as per direction contained therein. A date chart submitted by the Learned AR for the appellant Department indicates that this appeal was filed on 23.12.2020, apparently to cover up the latches and to give a defense to the Writ Petition filed in the Hon'ble High Court. Surprisingly, this appeal has been carried forward despite the fact that vide its order dated 24.11.2021, a stay application has been rejected as being infructuous and at the Appellant's end necessary orders have been passed by the competent authority amending the Bills of Entry and releasing the goods that has been released in favour of the respondent in compliance to the direction of Hon'ble High Court to carry out the order passed by the Commissioner (Appeals) with an observation that no appeal against such order was stated to have been filed as being noted in the reply affidavit filed subsequent thereto. Therefore, filing of an appeal afterward against the order of the Commissioner (Appeals), which has been specifically directed by the jurisdictional High Court for its implementation, is not in conformity to the judicial propriety to be entertained by this Tribunal besides the fact that multiplicity of litigations for the same cause of action in different judicial forums is forbidden in law. This being the facts on record, while dismissing the appeal, we express our disappointment over such unhealthy practice being followed by the appellant Department, who had recourse to challenge the legality of the order of provisional release of the imported goods passed in favour of the respondent or approach the Hon'ble Apex Court for the required relief.

4. Hence, the order:-

Both the appeals are dismissed and the order passed by the Commissioner (Appeals) having received the concurrence of the Hon'ble High Court, is hereby upheld. The appellant Department is warned to be careful in future in carrying forward such appeals frivolously in different pretext and the erring Commissioner is warned against such action. Such warning be communicated to him by the appellant Department, with an intimation to the appeal file.

(Operative portion of the order pronounced in open court)

**(Dr. Suvendu Kumar Pati)**
**Member (Judicial)**

**(Saniv Srivastava)**
**Member (Technical)**

Sinha