CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86887 OF 2021

[Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-396/2021-22 dated 23rd July 2021 passed by Commissioner of Customs (Appeals), Mumbai-III.]

Wartsila India Private Limited
10th Floor, Tower 1, Seawoods Grand Central
Sector 40, Seawoods Railway Station, Nerul Node
Navi Mumbai-400706. … ***Appellant***

versus

Commissioner of Customs (Import)
Air Cargo Complex, Sahar, Andheri (E)
Mumbai 400099 ***…Respondent***

APPEARANCE:

Shri Akhilesh Kangzia, Advocate with Ms Madhura Khandekar, Advocate for the appellant

Shri Manoj Kumar, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 85518 /2023

DATE OF HEARING:	14/03/2023
DATE OF DECISION:	14/03/2023

PER: C J MATHEW

M/s Wartsila India Private Limited, aggrieved by the order[1] of

[1] [order-in-appeal no. MUM-CUSTM-AMP-APP-396/2021-22 dated 23rd July 2021]

Commissioner of customs (Appeals), Mumbai Zone-III disposing off their challenge to the rejection of their request for re-assessment of 39 nos. bills of entry filed between 7th January 2019 and 14th August 2019 on import of 'diesel engine and module', is before us with the plea that the entire issue has been misconceived by the lower authorities and seeking refund of excess duty of ₹ 59,38,675 paid by them mistakenly along with applicable interest.

2. The appellant contends that the declaration of value, and the classification of goods, in the respective bills of entry were not disputed by customs authorities and that they, by omitting to claim the concessional rate of duty available on import of all goods conforming to the description in serial no. 448D of notification no. 50/2017-Cus dated 30th June 2017, had paid full duty at 15% instead of at 7.5%. Having been made aware subsequently, they, by application dated 18th December 2019 addressed to Deputy Commissioner of Customs (Refund), Air Cargo Complex, Mumbai, sought refund of excess so paid which is stated to be yet pending for disposal. The appellant filed a separate request dated 23rd December 2019 before the Deputy Commissioner of Customs (Group V), Air Cargo Complex, Mumbai for recall and re-assessment of the bills of entry and who, without hearing the appellant, rejected the request.

3. Their appeal before the first appellate authority was rejected for

being beyond jurisdiction inasmuch as the letter impugned in that proceedings was not an appealable order, as intended by section 128 of Customs Act, 1962, and the statutory deadline for appeal against the assessment in the bills of entry, which was an appealable order, had long passed. It was also held that the said letter of rejection could not be anything other than valid as re-assessment would have had the consequential relief of refund which, in terms of the decision of the Hon'ble Supreme Court - also referred to in the letter of Deputy Commissioner of Customs - in *ITC Ltd v. Commissioner of Central Excise, Kolkata-IV [2019 (368) ELT 216 (SC)],* could not be entertained without the prerequisite of challenge to the assessment. It was further held that the provisions of section 149 and section 154 of Customs Act, 1962, offering scope for amendments and for rectification of clerical errors, do not supplant the provisions of section 128 of Customs Act, 1962.

4. We have heard Learned Counsel for the appellant and Learned Authorised Representative at length; we, however, are constrained by the absence of the bills of entry evidencing the extent to which assessment was undertaken by the 'proper officer' at the time of clearance of the goods as well as the manner in which section 149 of Customs Act, 1962, with its restriction insofar as goods cleared for home consumption is concerned, would apply to the facts and circumstances of the dispute.

5. Though both the lower authorities have forayed into the zone of invoking of section 27 of Customs Act, 1962, we must take note that such application for refund was not before the original authority and the observations thereof in the communication rejecting the request for recall and reassessment of the bills of entry appear to be related to the consequence of acceding to the request of the appellant herein and the judicial rulings impeding such consequence. Therefore, for want of jurisdiction, that observation, though insinuated as ground for rejection, is merely peripheral and incidental in the absence of disposal of the claim for refund. Thereby, the first appellate authority was also not vested, under section 128 of Customs Act, 1962, to decide on the eligibility, or otherwise, of refund; the first appellate authority had before it only the rejection of request for recall and the reassessment and the upholding of the rejection is the sole issue that must be decided in this appeal.

6. Bearing that in mind and the failure on the part of the original authority to either refer the request to the authority vested with the power to grant amendments under section 149 of Customs Act, 1962 or to grant a hearing to the applicant on the issue of recall and reassessment of bills of entry relating to goods cleared under section 47 of Customs Act, 1962, it would be appropriate for such *lacuna* to be remedied and the full facts and circumstances to be brought on record. To enable this, we set aside the impugned order and remand

the matter back to the assessing authority for disposal of their application dated 23rd December 2019 after granting an opportunity to the appellant herein to be heard in person on the grounds, if any, on which such authority is unable to process such request.

7. Appeal is, accordingly, disposed off.

(Operative Part of the Order Pronounced in the open court on 14th March 2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*