CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 89457 of 2013

(Arising out of Order-in-Appeal No. GOA/CUS/GSK/65-66/2013 dated 30.08.2013 passed by the Commissioner of Central Excise & Service Tax (Appeals), Panaji, Goa)

Commissioner of Customs Central Excise And Service Tax-Goa .... **Appellant**
ICE House, EDC Complex, Plot No. 6,
Patto Panaji, Goa – 403001.

Versus

M/s Mineral Embassy .... **Respondent**
Flat No. 8, Ashiwathi Apart, 1st Floor, Vivvekananda
Nagar, Hospet, Karnataka – 583203.

Appearance:

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

Shri Siddharth Sriram, Advocate for the Appellant

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85945/2023

Date of Hearing: 12.06.2023
Date of Decision: 12.06.2023

Per: S.K. MOHANTY

Revenue has assailed the impugned order dated 30.08.2013 passed by the learned Commissioner (Appeals), Central Excise and Customs, Goa.

2. In the grounds of appeal annexed to appeal memorandum, Revenue has pleaded that the provisionally assessed Shipping Bill was subsequently assessed finally by the proper officer and as a

consequence, an amount of Rs. 1,64,77,478/- was sanctioned as refund in favour of the respondent-exporter. Thus, Revenue has challenged the impugned order on the ground that since the assessment of the Shipping Bill has attained finality, the learned Commissioner (Appeals) has no power to remand the matter back to the original authority for again finalisation of the assessment. Revenue has also stated in the grounds of appeal that the respondent should not be eligible for the benefit of interest in terms of Section 27A of the Customs Act, 1962.

3. Heard both sides and examined the case records.

4. On perusal of the impugned order, we find that the learned Commissioner (Appeals) has taken a preliminary stand that the final assessment order has not been passed by the proper officer. In the context, he has referred to the Notification No. 40/2012-CUS (N.T.) dated 02.05.2012 issued by the Ministry of Finance, Department of Revenue and observed that Deputy Commissioner is not a proper officer for the purpose of passing of the final assessment order in respect of the shipping bill filed by the exporter. However, on reading of the said notification, we find that at serial no. 3 in table annexed to the said notification, it has been specifically provided that the function of the Deputy Commissioner includes inter alia, the matter concerning assessment of the bills of entry/ shipping bills in terms of sub-section (5) of Section 17 *ibid*. Since, the learned Commissioner (Appeals) has not properly analyzed the notification, we find that the stand taken by him for remanding the matter back to the original authority cannot stand for judicial scrutiny. Therefore, we are of the considered view that the appeal filed by the Revenue on this ground is maintainable and

accordingly, the impugned order, insofar it has remanded the matter back to the original authority for passing of the final assessment is set aside.

5. With regard to the issue of grant of interest for delayed payment of refund under Section 27A *ibid,* we find that neither the original authority nor the Commissioner (Appeals) have discussed such aspect in the respective orders passed by them. Since, such issue has never been canvassed before the authorities below, it cannot be said that Revenue is aggrieved on such issue. Therefore, we are not expressing any opinion on the aspect of payment of interest, as urged by Revenue in the grounds of appeal.

6. In view of the foregoing discussion, the appeal is disposed off by holding that the impugned order passed by the learned Commissioner (Appeals) is neither proper nor justified in remanding the matter back to the original authority for finalization of assessment, which has specifically been finally assessed in the year 2011.

7. The appeal is disposed off in the above terms.

(Operative portion of the order pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha