CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 87766 OF 2019

[Arising out of Order-in-Appeal No: 140 (Gr. VIID)/2019(JNCH)/Appeal-I dated 19th June 2019 passed by the Commissioner of Customs (Appeals), Mumbai Zone – II.]

Eternis Fine Chemicals Limited
1004, Peninsula Tower, Peninsula Corporate Park,
Lower Parel, Mumbai-400013 … ***Appellant***

versus

Commissioner of Customs
JNCH, Nhava Sheva, Taluka: Uran, Dist: Raigad,
Mumbai-400707 …***Respondent***

APPEARANCE:

Ms Mrinial Sharma, Advocate for the appellant

Shri Ram Kumar, Assistant Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 85603 /2024

DATE OF HEARING:	18/04/2024
DATE OF DECISION:	18/04/2024

This appeal, against order[1] of Commissioner of Customs (Appeals), Mumbai Zone-II, JNCH, Nhava Sheva, lies, as pointed out

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[1] [order-in-appeal No. 140 (Gr. VIID)/2019(JNCH)/Appeal-I dated 19th June 2019]

by the Learned Counsel for appellant, within the narrow compass of legality of

> *'8. ………..As far as the observation of the Original Authority regarding the short payment under section 28(4) of the Customs Act, 1962, the same are pre-mature, at this stage as the same cannot be decided without issue of Show Cause Notice. I find that the submissions of the appellant indicate that the present case was under investigation by DRI. Therefore, Original Authority, may co-ordinate with the officers of DRI, Kolkata for taking appropriate actions at their ends as deemed fit.'*

in the impugned order which allegedly traversed beyond the issue in dispute before the first appellate authority.

2. According to Learned Counsel for appellant they had, owing to cavil about disposal of their request to re-assess bills of entry filed between October 2017 and April 2018 for clearance of impugned goods against claim for exemption of both basic customs duty as well as additional customs duty *vide* notification no 18/2015-Cus dated 15th April 2015 which did not acknowledge the archiving of the Central Excise Act, 1944 and the successor dues in accordance with *proviso* to section 5 of Integrated Goods and Service Tax Act, 2017, sought appellate intervention impugning the letter of rejection. It was submitted that the first appellate authority, having noted all the facts and circumstances as well as the amendments carried out in the relevant bills of entry consequent upon application under section 149 of Customs Act, 1962 and, while holding the "observation" in the

communication of the Additional Commissioner of Customs to be premature in the absence of show cause notice, went on to issue direction to take further steps instead of dismissing the issue for being contextually infructuous. According to Learned Counsel for appellant, they have reason to be apprehensive that such observation in the impugned order may find resonance with original authority to act as direction to initiate proceedings, as yet uncontemplated, against them.

3. Learned Authorized Representative submitted that there is no issue in dispute inasmuch as all the duties have since been discharged in full and that letter, which was carried in appeal, lacked legal standing to have been cause of any grievance real or imagined.

4. This is a dispute which should never have been and also should not be here. The appellant had no cause of grievance insofar as the letter of Additional Commissioner of Customs is concerned inasmuch as mere drawing of attention to the provision of law is not a surrogate notice under section 28(4) of Customs Act, 1962 for recovery of duties not paid or short paid. Notwithstanding that superfluity in the impugned communication, the first appellate authority chose to clothe it with undeserving *gravitas,* even while noticing that amendments to bills of entry had regularized the assessment, for issuing a direction which is not in consonance with Customs Act, 1962 and also not in consequence of any notice under section 28(4) of Customs Act, 1962.

5. In view of the above facts and circumstances, the entire dispute is infructuous, there is no detriment devolving on the appellant and no prejudice to Revenue, if the impugned order be set aside. Appeal is disposed off by setting aside the impugned order.

(Dictated and Pronounced in Open Court)

(C J MATHEW)
Member (Technical)

**/as*