CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Early Hearing Application No. 85439 of 2024
(on behalf of Respondent)

In

Customs Appeal No. 86709 of 2023

(Arising out of Order-in-Appeal No. 430 & 431 (CEAC)/2023 (JNCH)/Appeal dated 26.04.2023 passed by the Commissioner of Customs (Appeals), JNCH, Nhava Sheva, Mumbai-II)

Commissioner of Customs (NS-II), Nhava Sheva .... Appellant
Centralized Review and Appeal Cell (Export), NS-II,
JNCH, Nhava Sheva, Raigad – 400707

Versus

M/s Tatsy Bite Eatables Ltd. .... Respondent
Regd. Office – 201/202, Mayfair Tower,
Wakdewadi, Shivaji Nagar, Pune – 411 005

AND

Customs Appeal No. 86709 of 2023

(Arising out of Order-in-Appeal No. 430 & 431 (CEAC)/2023 (JNCH)/Appeal dated 26.04.2023 passed by the Commissioner of Customs (Appeals), JNCH, Nhava Sheva, Mumbai-II)

Commissioner of Customs (NS-II), Nhava Sheva .... Appellant
Centralized Review and Appeal Cell (Export), NS-II,
JNCH< Nhava Sheva, Raigad – 400707

Versus

M/s Tatsy Bite Eatables Ltd. .... Respondent
Regd. Office – 201/202, Mayfair Tower,
Wakdewadi, Shivaji Nagar, Pune – 411 005

WITH

Customs Appeal No. 86358 of 2024

(Arising out of Order-in-Appeal No. 430 & 431 (CEAC)/2023 (JNCH)/Appeal dated 26.04.2023 passed by the Commissioner of Customs (Appeals), JNCH, Nhava Sheva, Mumbai-II)

Commissioner of Customs (NS-II), Nhava Sheva .... Appellant
Centralized Review and Appeal Cell (Export), NS-II,
JNCH, Nhava Sheva, Raigad – 400707

Versus

M/s Tatsy Bite Eatables Ltd. .... Respondent
Regd. Office – 201/202, Mayfair Tower,
Wakdewadi, Shivaji Nagar, Pune – 411 005

Appearance:

Shri Ram Kumar, Authorized Representative for the Appellant
Shri Anupam Dighe, Advocate for the Respondent

CORAM:

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

FINAL ORDER NO. A/85678-85679/2024

Date of Hearing: 04.07.2024
Date of Decision: 04.07.2024

Per: S.K. Mohanty

Respondent has filed this miscellaneous application, praying for early hearing of the appeal on the ground that against a common impugned order dated 26.04.2023 passed by the learned Commissioner of Customs (Appeals), Mumbai-II, the Revenue has preferred the appeal, which was listed as C/86709/2023 and the subsequent appeal by them is listed by Registry as C/86358/2024. Considering the fact that both the appeals were filed against a common impugned order dated 26.04.2023 passed by the learned Commissioner (Appeals), prayer made by the Respondent is considered and accordingly, the early hearing application is allowed.

2. Briefly stated, the facts of the case are that the respondents herein had filed a letter before the Customs Department on December 9, 2021 for amendment/conversion of the shipping bills filed under Duty Drawback Scheme to another Scheme of Advance License. The representation made by the respondent was disposed of by the Assistant Commissioner of Customs, CEAC, JNCH, Nhava Sheva intimating that the jurisdictional Commissioner of Customs has taken a view for non-consideration of the request for amendment/

conversion of the shipping bills. Feeling aggrieved with the communication of the Assistant Commissioner of Customs, the respondents had preferred appeals before the learned Commissioner (Appeals). The appeals filed by the respondents were favourably considered by the learned Commissioner (Appeals) vide the impugned order dated 26.04.2023 and allowed the appeal filed by the respondents. Feeling aggrieved with the impugned order dated 26.04.2023, the Revenue has preferred these appeals before the Tribunal and contended *inter alia* that the decision for not entertaining the amendment application was taken by the jurisdictional Commissioner and in terms of Section 128 of the Customs Act, 1962, the learned Commissioner (Appeals) has no power to entertain the appeal filed against the decision taken by the Administrative Commissioner.

3. Insofar as filing of appeal before the learned Commissioner (Appeals) is concerned, Section 128 of the Customs Act, 1962 provides that 'any person aggrieved by any decision or order passed under this Act by an officer of Customs lower in rank than Principal Commissioner of Customs or Commissioner of Customs, may appeal to the Commissioner (Appeals) within the time frame prescribed therein.' In the present case, since the decision was taken by the Administrative Commissioner himself and not by any officer, who is subordinate to him, we are of the view that against the decision of the Administrative Commissioner, appeal does not lie before the Commissioner (Appeals) and the said decision can only be questioned or challenged by way of filing the appeal before the Tribunal in terms of Section 129A *ibid*. Therefore, we find substance in the grounds of appeal raised by the Revenue that Commissioner (Appeals) has no

jurisdiction to entertain the appeal filed against the decision of the Administrative Commissioner for not entertaining the application for amendment of shipping bills.

4. In view of the above discussions, the impugned order dated 26.04.2023 passed by the learned Commissioner (Appeals) is set aside and the appeals filed by the Revenue are allowed.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha