CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

<u>E. HEARING</u>

Customs Appeal No. 88678 of 2014

(Arising out of Order-in-Appeal No. 2266 (Gr.2G)/2014(JNCH)/IMP-2180 dated 28.05.2014 passed by the Commissioner of Customs (Appeals), Mumbai-II)

M/s CPF (India) Pvt. Ltd. **.... Appellant**
(Formerly M/s Charoen Pokphand (India) Pvt. Ltd.)
Door No. 201, IIFL, SAITH Centre, Plot No. 82,
Survey No. 232, Airport Road, Sakorenagar,
Viman Nagar, Pune – 411 014

Versus

Commissioner of Customs (Import), Nhava Sheva **.... Respondent**
JNCH, Nhava Sheva,
P.O. Uran, Dist. Raigad – 400 707

WITH

Customs Appeal No. 88679 of 2014

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Versus

Commissioner of Customs (Import), Nhava Sheva **.... Respondent**
JNCH, Nhava Sheva,
P.O. Uran, Dist. Raigad – 400 707

Appearance:

Ms. Pramila Vishwanathan, Advocate for the Appellant

Shri Rajiv Ranjan, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/85466-85467/2025

Date of Hearing: 20.02.2025

Date of Decision: 20.02.2025

PER: S.K. MOHANTY

The issue involved in both these appeals is identical and accordingly, the same are taken up for hearing together and a common order is being passed.

2. The appellants had filed the Bills of Entry for clearance of Poultry Equipment imported from M/s Kasetphand Industry Co. Ltd., Thailand by claiming classification of the said goods under CTH 3925 and CTH 9406. The Bills of Entry were self-assessed in terms of sub-section (1) of Section 17 of the Customs Act, 1962. However, the appellants had challenged the self-assessment in respect of Bills of Entry by way of filing the appeal before the learned Commissioner of Customs (Appeals). The self-assessed Bills of Entry were assailed on the ground that the machinery intended to be part of poultry breeding machinery ought to be classifiable under CTH 8436 and due to inadvertence, the appellant had claimed the classification of those equipment under CTH 3925. The appeals filed by the appellants were disposed of by the learned Commissioner (Appeals), holding that the appellants cannot challenge their own self-assessment before the Commissioner (Appeals) in terms of Section 128 of the Customs Act, 1962. Feeling aggrieved with the impugned orders both dated 28.05.2014, the appellants preferred these appeals before the Tribunal.

2. Section 2(2) of the Customs Act, 1962 defines the term "*assessment*". The said definition clause also includes the 'self-assessment' within its purview for consideration of the phrase "assessment". Insofar as the 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*', may appeal against before the Commissioner (Appeals). Since self-assessment is also considered as an order or decision of assessment in terms of Section 2(2) *ibid* read with Section 17 *ibid*, in our considered view, filing of appeal against the self-assessment before the Commissioner (Appeals) is maintainable under Section 128 *ibid*. We find that the issue arising out of the present dispute is no more *res integra*, in view of the judgment delivered by the Hon'ble Supreme Court in the case of *ITC Ltd. Vs. Commissioner of Central Excise, Kolkata-IV- 2019 (9) TMI 802 – SUPREME COURT (LB)*. In the said judgment, the Hon'ble Supreme Court has held that self-assessment Bill of Entry is an assessment order passed under the

Customs Act, 1962 and this would be appealable. By relying upon the said judgment delivered by the Hon'ble Supreme Court in the case of *ITC Ltd. (supra)*, this Tribunal in the case of *M/s Cipla Ltd. Vs. Commissioner of Customs, ACC, Mumbai – 2024 (7) TMI 765 – CESTAT MUMBAI* has held that the self-assessment is also appealable before the Commissioner (Appeals). Therefore, we are of the view that the self-assessment order can be appealed before the learned Commissioner (Appeals). In the present case, since the learned Commissioner of Customs (Appeals) had not discussed the merits of the case and dismissed the appeals solely on the ground of maintainability, we are of the view that the matter should go back to him for disposal of the appeals based on merits of the case as canvased by the appellants in their grounds of appeal.

3. Therefore, the impugned orders both dated 28.05.2014 are set aside and the appeals are allowed by way of remand to the learned Commissioner (Appeals) for deciding the appeals afresh on the basis of available records. Needless to say that opportunity of personal hearing should be granted to the appellant before deciding the appeals.

4. In the result, the appeals are allowed by way of remand.

(Dictated and pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha