CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. 3

Customs Appeal No. 51055 of 2020

(Arising out of Order-in-Appeal No. CC(A)/Customs/D-II/ICD/TKD/IMP/03/2020-21 dated 11.05.2020 passed by the Commissioner of Customs (Appeals), New Delhi)

M/s Holy Land Marketing Private Limited **Appellant**
D-154, 2nd Floor,
New Rajinder Nagar,
New Delhi-110 060.

VERSUS

Commissioner of Customs, New Delhi **Respondent**
Inland Container Depot (Import),
Tughlakabad,
New Delhi.

Appearance

Shri Rupender Sinhmar & Ms. Rhea Chawla, Advocates – for the Appellant.

Shri Rakesh Kumar, Authorized Representative – for the Respondent.

CORAM:

HON'BLE MR. P.V SUBBA RAO, MEMBER (TECHNICAL)
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

DATE OF HEARING : 24/01/2023
DATE OF DECISION : 31/01/2023

Final Order No. 50094/2023

P.V. Subba Rao:

M/s Holy Land Marketing Private Limited, New Delhi[1] filed this appeal to assail the Order-in-Appeal dated 11.05.2020 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi whereby he allowed the appeal of the Revenue and set aside the assessment order dated 31.01.2019 passed by the Deputy

1 **the appellant**

Commissioner of Customs (Gr-I), ICD (Import), Tughlakabad, New Delhi.

2. The appellant imported canned pineapple slices and filed Bill of Entry No. 6030589 dated 18.4.2018 classifying them under Customs Tariff Heading[2] 20082000. The Customs Electronic Data Interchange System[3] facilitated the Bill of Entry, i.e., cleared the Bill of Entry without re-assessment by the officer or examination. As per its self-assessment, the appellant paid duties on 2.5.2018 and an order permitting clearance of goods for home consumption under Section 47 of the Customs Act, 1962 was given on the same date. Thereafter, on 4.5.2018 the appellant submitted a letter to the Deputy Commissioner requesting him to re-assess the bill of entry under CTH 08119010. The Deputy Commissioner passed an assessment order dated 31.1.2019 i.e., after more than 8 months after the goods were cleared for home consumption under Section 17(5) rejecting the self-assessment by the importer of the imported goods under CTH 20082000 and re-assessing them under CTH 08119010.

3. This assessment order was reviewed by the Principal Commissioner of Customs, ICD, TKD and Revenue filed an appeal which was allowed by the impugned order and the assessment order was set aside. The Commissioner (Appeals) held in the impugned order that the assessment order was not legal in terms of Section 17(5) because the goods had already been given out of charge by the officer on 2.5.2018. Therefore, re-assessment order

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2 CTH
3 EDI

by the Deputy Commissioner under Section 17(5) could not have been issued on 31.01.2019 after the goods have already been cleared for home consumption. He placed reliance on the judgment of the Hon'ble Supreme Court in the case of **ITC Limited Vs. Commissioner of Central Excise, Kolkata-IV**[4] in which it has been held by the Larger Bench of the Supreme Court that even self-assessment is also an assessment under the Customs Act and can be appealed against by both sides. The Commissioner (Appeals), therefore, held that the self-assessment by the appellant had become final on payment of duty and clearance of the imported goods. This self-assessment could be altered only through appeal proceedings and not through re-assessment under Section 17(5). He also found the appeal filed by the Revenue to be correct on merits i.e., classification of the product "canned pineapple slices" under CTH 20082000 was correct. However, he did not elaborate his findings regarding the merits of the classification.

4. Aggrieved, the appellant filed this appeal for the following prayer:

(i) Set aside the Order-in-Appeal dated 11.05.2020 and restore the Order of reassessment dated 31.01.2019 passed by the learned Deputy Commissioner with consequential reliefs [the date of re-assessment order was erroneously mentioned as 4.5.2020 in the appeal);

(ii) Hold that the Canned Pineapple and other canned fruits and canned vegetables of the same nature imported by the appellant are classifiable under CTH 08119010 and or 0811 or 0711 respectively;

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(iii) Refund the duty wrongly charged and deposited under protest by the appellant;

(iv) Clarify the correct classification so that the assessee is not harassed;

(v) Pass such other order or orders as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.

5. We have heard learned counsel for the appellant and learned authorised representative for the Revenue and perused the records.

6. Two questions which arise in this case are (a) whether the Deputy Commissioner had the power to re-assess the goods under Section 17(5) after the goods have been cleared for home consumption; and (b) whether the imported goods merit classification under CTH 20082000 or under CTH 08119010.

7. With effect from 8.4.2011, the assessment of duty of customs under Section 17 was revised and a system of self-assessment of duty by the importer or exporter was introduced. The self-assessment made can be verified by the proper officer and for this purpose require the importer or exporter to produce necessary documents. If it is found on verification, examination or testing of the goods that self-assessment was not done correctly the proper officer may re-assess the duty leviable on such goods. Where any re-assessment is done by the proper officer, he is required to issue a speaking order unless the importer or exporter confirms his acceptance of the re-assessment in writing.

8. The customs EDI allows clearance of many goods based on self-assessment without passing the bills of entry or shipping bills through officers for verification, re-assessment or examination. Some bills of entry selected on the basis of risk analysis are sent by the system for verification or examination. It is a matter of daily occurrence in customs houses that some times the importer himself makes an error in self-assessment by say, not claiming an eligible exemption notification or making a wrong classification and requests the officer to re-call the bill of entry from the system and re-assess it even though the system did not mark it for re-assessment. Assessing officers do recall such bills of entry and correct the mistakes. This process avoids a lot of unnecessary appeals. Further, if the bill of entry is marked to the officer for re-assessment, the assessment initially done on the basis of the details available in the bill of entry. On examination, if differences are found, the bill of entry may be again re-assessed. Thus, the process of self-assessment by the importer can be followed by re-assessment by the officer more than once. The definition of assessment under Section 2(2) of the Act is as follows:

> "(2) "assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to-
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> (a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;
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> (b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;
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> (c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;

(d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;

(e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;

(f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods, and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil".

9. The question which arises is when does this process of assessment or re-assessment end. This ends when the goods cease to be imported goods under Section 2(25) of the Act which reads as follows:

> "imported goods" means any goods brought into India from a place outside India but **does not include goods which have been cleared for home consumption;**

10. In other words, when an order is issued clearing the goods for home consumption, the goods cease to be imported goods, the importer ceases to be the importer under Section 2(26) and the imported goods cease to be dutiable goods under Section 2(14). After an order permitting clearance of goods for home consumption is issued, there can be no more assessment.

11. However, after such assessment an appeal will lie to the appellate authority i.e., Commissioner (Appeals). A doubt may arise as to whether when goods are cleared only on the basis of self-assessment and there is no order of re-assessment by the officer, an appeal can be filed before Commissioner (Appeals). The Hon'ble Supreme Court in the case of **ITC Ltd.** answered this question not affirmative. The relevant paragraphs are as below:

> **"42.** It was contended that no appeal lies against the order of self-assessment. The provisions of Section 128 deal with appeals to the Commissioner (Appeals). Any person aggrieved by any decision or order may appeal to the Commissioner (Appeals) within 60 days. There is a provision for condonation of delay for another 30 days. The provisions of Section 128 are extracted hereunder :
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> > **"128. Appeals to [Commissioner (Appeals)].** — (1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a [Principal Commissioner of Customs or Commissioner of Customs] may appeal to the [Commissioner (Appeals)] [within sixty days] from the date of the communication to him of such decision or order :
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> > [Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.]
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> > [(1A) The Commissioner (Appeals) may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing :
> >
> > Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.]
> >
> > (2) Every appeal under this section shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf."
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> **43.** As the order of self-assessment is nonetheless an assessment order passed under the Act, obviously it would be appealable by any person aggrieved thereby. The expression 'Any person' is of wider amplitude. The revenue, as well as assessee, can also prefer an appeal aggrieved by an order of assessment. It is not only the order of re-assessment which is appealable but the provisions of Section 128 make appealable any decision or order under the Act including that of self-assessment. The order of self-assessment is an order of assessment as per Section 2(2), as such, it is appealable in case any person is aggrieved by it. There is a specific provision made in Section 17 to pass a reasoned/speaking order in the situation in case on verification, self-assessment is not found to be satisfactory, an order of re-assessment has to be passed under Section 17(4). Section 128 has not provided for an appeal against a speaking order but against "any order" which is of wide amplitude. The reasoning employed by the High Court is that since there is no *lis*, no speaking order is passed, as such an appeal would not lie, is not sustainable in law, is contrary to what has been held by this Court in *Escorts* (supra).

12. Thus, once the assessment is completed both sides can file an appeal before the Commissioner (Appeals). Further, Revenue can also review any assessment including self-assessment if duties have not been levied, short levied not paid or short paid and serve a notice to the importer or exporter under Section 28 within one

year or five years, as the case may be. Explanation (i) to Section 28 clarifies that the relevant date for calculating the period of one year and five years for issue of notice is the date on which proper officer makes an order clearing the goods for home consumption. Thus, once the assessment under Section 17 comes to an end by issue of an order clearing the goods for home consumption, the clock starts ticking for limitation to issue a demand under Section 28.

13. It also needs to be noted that the customs EDI system does not permit re-assessment of the bills of entry once an order permitting clearance of goods for home consumption is given for the bill of entry.

14. In this case, the Deputy Commissioner has clearly erred in issuing an assessment order under Section 17(5) after the goods were already cleared for home consumption. He had no authority to issue such an order because he could assess a bill of entry only if the goods are still "imported goods" and are "dutiable goods". Once an order permitting clearance of goods for home consumption is given, they cease to be imported goods under Section 2(25) and cease to be dutiable goods under Section 2(14). If an error is noticed in the assessment including self-assessment, the option available to the importer is to file an appeal before Commissioner (Appeals). The Deputy Commissioner has clearly issued the assessment order without any authority and, therefore, the Commissioner (Appeals) was correct in setting aside the assessment order.

15. As the self assessment order by the Deputy Commissioner has been issued without any authority of law and has correctly been set aside by the Commissioner (Appeals), there is no need for us to go into the merits of the classification of the imported goods.

16. In view of the above, the appeal filed by the appellant is rejected and the impugned order is upheld leaving the question of classification of the imported goods open.

(Pronounced in open Court on 31.01.2023)

(P. V. SUBBA RAO)
MEMBER(TECHNICAL)

(BINU TAMTA)
MEMBER(JUDICIAL)

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