
(2014) 08 DEL CK 0009
In the Delhi High Court
Case No : Custom A. 1/2014

Amit Electronics

APPELLANT

Vs

Commissioner of Customs (Preventive)

RESPONDENT

Date of Decision : 01-08-2014

Acts Referred:

Customs Act, 1962 — Section 110A, 128(1), 129A(1), 130, 28

Citation : (2014) 309 ELT 60

Hon'ble Judges : Siddharth Mridul, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Priyadarshi Manish, Advocate for the Appellant; Kamal Nijhawan, Advocate for the Respondent

Judgement

Badar Durrez Ahmed, J.—This is an appeal u/s 130 of the Customs Act, 1962 (hereinafter referred to as "the" said Act) and it is directed against the final order dated 21.03.2014 passed by the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as "the" Tribunal) in Customs Appeal No. 59662/2013.

2. We have heard the learned counsel for the parties at the stage of admission itself and the learned counsel are agreed that the appeal may be disposed of at the threshold on the basis of the material available which includes the appeal paper book as well as the original file which has been brought by the learned counsel appearing on behalf of the revenue. The substantial question of law which arises for our consideration is as follows:-

(1) Whether the said Tribunal had not erred in law in directing remand of the matter to the Commissioner of Customs (Appeals) even though the said Tribunal had categorically held that the Commissioner of Customs (Appeals) did not have the jurisdiction to hear the appeal?

3. The facts which give rise to this question of law are narrated herein below.

4. The appellant had imported enamelled aluminium wire and copper wire by

virtue of four bills of entry dated 02.02.2013, 11.02.2013, 13.02.2013 and 19.02.2013. The said goods were seized by the Customs Authorities. The appellant applied for provisional release of the said goods u/s 110A of the said Act. By an order dated 03.05.2013, the Commissioner of Customs (Preventive) directed the provisional release of the goods subject to the appellant giving a bond for 100% of the value of the imports with a bank guarantee for 25% of the said value and payment of differential duty in cash. This order was passed in the file and we have examined the file and confirm the same. The order was passed on 03.05.2013 by Mr. Pawan Jain, Commissioner of Customs (Preventive). The same was communicated by the Assistant Commissioner (Delta) (Mr. Pawan Khetan) by a letter dated 03.05.2013 but actually signed on 06.05.2013. The said letter reads as under:-

OFFICE OF THE COMMISSIONER OF CUSTOMS (PREVENTIVE)

NEW CUSTOM HOUSE, NEAR IGI AIRPORT, NEW DELHI

C. No. VIII(SB)10/CusPrev

/Delta/26/13/6154/06.05.13

Dated: 03.05.13

M/s. Amit Electronics,

WZ-2, Ram Garh Colony,

Basai Dara Pur, New Delhi-110015.

Sub: Provisional release of seized goods - reg.

The competent authority has acceded to your request for the provisional release of the seized goods on furnishing the Surety Bond for Rs. 77,25,934/- and Bank Guarantee for Rs. 19,31,484/- (25% of the Bond value). In addition to the above you are also requested to deposit the amount of Rs. 8,13,984/- as differential Customs duty on the seized goods. Yours faithfully,

Sd/-

(Pawan Khetan)

Assistant Commissioner (Delta)"

5. From the above letter, it is evident that the communication was sent by the Assistant Commissioner (Delta) on 06.05.2013 and that the letter mentioned that "the competent authority" had acceded to the appellants request for provisional release on the conditions mentioned therein. It is, therefore, clear that it is not the Assistant Commissioner (Delta) who had passed the order of provisional release, but the "competent" authority.

6. At this juncture, we would like to express our view that the revenue authorities should make it clear as to who the "competent" authority is when it

sends out such communications. In this case, it could have been easily stated by the Assistant Commissioner (Delta) that the "competent authority," that is, the Commissioner of Customs (Preventive) had passed the order. That would have saved a lot of confusion which has arisen in the present case. We, therefore, feel that this order be placed before the Chief Commissioner of Customs (Import & General) as well as the Chief Commissioner of Customs (Preventive) so that future communications made by the customs authorities make it clear as to which particular authority has passed the order and not just mention the words "competent authority".

7. Coming back to the facts of the case, the said provisional release order was not to the liking of the appellant, who sought certain modifications. The same was modified on 17.05.2013 by the Commissioner of Customs (Preventive). The same was communicated by a letter dated 21.05.2013 issued by the Assistant Commissioner (Delta) to the appellant. The appellant was not satisfied with the original order dated 03.05.2013 as also the order communicated by virtue of the letter dated 21.05.2013 and was aggrieved by the conditions imposed for the provisional release.

8. It is appropriate to mention that, in the meanwhile, before the communication dated 21.05.2013 was issued, the appellant had filed a writ petition before this Court being WP(C) 3344/2013 challenging the conditions imposed by virtue of the order dated 03.05.2013. The same was dismissed as withdrawn as would be evident from the order passed on 20.05.2013 by a Division Bench of this Court, which was as under:-

"At the outset, the learned counsel for the respondent submitted that the impugned order dated 03.05.2013 passed by the respondent No.1 directing provisional release of the seized goods is an appealable order and the petitioner has an alternative remedy of filing an appeal, if he is aggrieved by the said provisional release order. In view of this statement, the learned counsel for the petitioner requests for permission to withdraw this writ petition with the liberty to file an appeal against the said order.

Dismissed as withdrawn with the aforesaid liberty."

After the dismissal of the said writ petition in the circumstances aforesaid, the communication dated 21.05.2013 was received by the appellant.

9. The appellant then filed an appeal before the Commissioner of Customs (Appeals) in respect of both the orders dated 03.05.2013 as well as the order dated 17.05.2013 which had been communicated by virtue of the letter dated 21.05.2013. The Commissioner of Customs (Appeals) disposed of the same by an Order-in-Appeal No. CC (A) CUS/352/2013 dated 10.06.2013 by relaxing some of the conditions. In other words, the order passed by the Commissioner of Customs (Appeals) was an order passed in favour of the appellant. While doing so, the Commissioner of Customs (Appeals) noted that it had jurisdiction to hear the appeal and to pass an order therein. This fact is noted in paragraph 4 of the

said order dated 10.06.2013 which is extracted herein below:-

4. I have carefully gone through the Order and the contents of the Appeal and the oral as well as written /additional submissions. The only dispute is regarding the conditions imposed by the competent authority as conveyed vide the said letter dated 21.5.2013. It has been ascertained from the concerned branch that the competent authority is the Additional Commissioner of Customs u/s 110A of the Act *ibid*, who is the Adjudicating Authority in the instant case. Hence, the appeal falls within the jurisdiction of this Office. The issue is clear to understand that the goods could not be released as there was dispute in terms of valuation albeit after assessment and clearance thereof, which is required to be ascertained and adjudicated accordingly. Since the Appellant sought provisional release of the said goods, hence, the present impugned letter was issued."

(underlining added)

10. In our view, the Commissioner of Customs (Appeals) was not at all correct in observing that the Additional Commissioner of Customs was the adjudicating authority in the present case. We have already pointed out above that the provisional release orders dated 03.05.2013 and 17.05.2013 were both passed by the Commissioner of Customs (Preventive). Therefore, the Commissioner of Customs (Appeals) was wrong in concluding that the appeal fell within the jurisdiction of the office of the Commissioner of Customs (Appeals).

11. For this and other reasons, being aggrieved by the order passed by the Commissioner of Customs (Appeals), the revenue filed the said appeal before the Tribunal, which has been decided by the Tribunal by virtue of the impugned order dated 21.03.2014. The Tribunal took the correct view that the Commissioner of Customs (Appeals) had no jurisdiction to hear the said appeal which resulted in the order dated 10.06.2013. The relevant observations of the Tribunal are as under:-

2. This is Revenue's Appeal against the order of Commissioner (Appeals) No. CC(A)CUS/352/2013 dated 10.6.2013. Revenue in their grounds of appeal stated that the value of the impugned goods is Rs.77,25,934/-. This value, which may be subject to revision on the higher side in the final decision/order of the adjudicating authority, is much beyond the threshold value of Rs.50 lakhs mandated in Circular No. 23/2009-Customs dated September 1, 2009 for deciding the rank of the proper officer for adjudication of such cases. The said Circular requires the Commissioner of Customs to adjudicate cases beyond this threshold and hence the Commissioner of Customs is the proper adjudicating authority in such cases. Thus, any appeal against any decision/order taken by the Commissioner of Customs as adjudicating authority should be with CESTAT and not with Commissioner of Customs (Appeals) as per Section 129A(1) of the Customs Act, 1962 . Further, the decision to grant provisional release was taken by the Commissioner of Customs (Preventive), New Delhi and conveyed by Assistant Commissioner of Customs. Mere communication of a decision/order of

Commissioner by an officer of the rank of Assistant Commissioner does not render the same a decision or order passed by Assistant Commissioner appealable before the Commissioner of Customs (Appeals) u/s 128(1) of the Customs Act, 1962 . This has clearly been upheld in a number of cases including Shri Dhananjay Kumar. vs. Commissioner of Customs (Import), Nhava Sheva [2008 - TIOL - 2867 - CESTTAT - MUM] where it is held that "Tribunal in series of judgments has been consistently holding that the order of the Collector but intimated by Superintendent, appeal against such order, will lie with Tribunal. This being an order of Commissioner having held in an earlier para that the order is appealable, the ratio in the cases of 1992 (62) ELT 657 and 1995 (58) ECR 71 , will apply, hence on this ground also, the appeal has to be entertained by the Tribunal and I do so.....". Accordingly, if at all, any appeal lies against the aforesaid decision of provisional release of seized goods on submission of requisite security, such an appeal should be with CESTAT and not with Commissioner of Customs (Appeals) as per Section 129A(1) of the Customs Act, 1962. Therefore, Commissioner of Customs (Appeals) has grossly erred in the matter of jurisdiction as well as the legality and passed an order bad in law.....

3. xxxx xxxx xxxx xxxx

4. I find force in the department's contention. The Commissioner (Appeals) has passed order without ascertaining the facts as stated above as well as legal position. Order passed by Commissioner (Appeals) is contrary to the provisions of law. I, therefore, set aside this impugned order and remand the matter back to the Commissioner (Appeals) who should pass an appealable order after going through the grounds of appeal taken by the Revenue and hearing both appellant and the respondent . Order in remand proceedings should be passed within 3 months from the date of passing this order. Ordered accordingly."

(underlining added)

12. The Tribunal was right in coming to the conclusion that the Commissioner of Customs (Appeals) did not have the jurisdiction to hear the appeal and to pass the order dated 10.06.2013. However, the Tribunal was wrong in remanding the matter to the very same Commissioner of Customs (Appeals) to hear the case on merits after having held that he did not have the jurisdiction to entertain the appeal arising out of the orders of provisional release passed by the Commissioner of Customs (Preventive). The Tribunal, having once concluded and rightly so that the Commissioner of Customs (Appeals) did not have the jurisdiction to entertain the appeal filed by the appellant, ought to have set aside the order dated 10.06.2013 and decided the matter itself on merits.

13. The learned counsel appearing on behalf of the appellant submitted that the Tribunal, while considering the question of jurisdiction of the Commissioner of Customs (Appeals), had placed reliance on a Board Circular No. 23/09-Customs dated 01.09.2009. He submitted that the said circular had been amended by a

subsequent circular being Circular No. 24/2011 dated 31.05.2011. He pointed out that while the monetary limits of adjudication prescribed under the circular dated 01.09.2009 were according to the value of the goods, the circular dated 31.05.2011 had modified the same and the monetary limits were prescribed with reference to the amount of duty involved. Paragraph 4 of the said circular dated 31.05.2011 is relevant for our purposes and the same is reproduced herein below:-

4. The matter has been examined in the Board. In order to streamline guidelines on monetary limit for adjudication of cases by different grades of Customs Officers, it has been decided that henceforth, cases where SCNs are issued u/s 28 of the Customs Act, 1962, these will be adjudicated as per following norms:

The learned counsel for the appellant submitted that the adjudication of cases which involved duty upto to Rs. 50 lacs had to be done by the Additional Commissioner of Customs / Joint Commissioner of Customs. He submitted that in the present case the duty involved was less than Rs. 50 lacs and, therefore, the adjudication ought to have been done by the Additional Commissioner/ Joint Commissioner. And, therefore, the appeal would lie to the Commissioner of Customs (Appeals). Thus, according to the learned counsel for the appellant, the order passed by the Commissioner of Customs (Appeals) on 10.06.2013 would not be without jurisdiction. The conclusion arrived at by the learned counsel for the appellant is based on a faulty premise and on ignorance of the factual position. The faulty premise is that the Commissioner of Customs cannot adjudicate a matter which involves duty of less than 50 lacs. The extract of the circular dated 31.05.2011 makes it clear that the Commissioner of Customs has authority to adjudicate all cases without limit. Therefore, the Commissioner of Customs (Preventive) acted within his jurisdiction when the orders dated 03.05.2013 and 17.05.2013 were issued by him. The learned counsel for the appellant is factually wrong because the order was passed by the Commissioner of Customs (Preventive) and not by an Additional Commissioner of Customs or by a Joint Commissioner of Customs. Therefore, the submission made by the learned counsel for the appellant that the order-in-appeal dated 10.06.2013 did not suffer from lack of jurisdiction, cannot be accepted.

14. As a result of the forgoing discussion, the impugned order dated 21.03.2014 passed by the Tribunal to the extent that the matter has been remanded to the Commissioner of Customs (Appeals) is set aside. The logical consequence of this is that the appeal filed by the revenue before the Tribunal stands allowed. However, the appellant herein is not without a remedy. He may file an appeal before the Tribunal challenging the orders dated 03.05.2013 and 17.05.2013 before the Tribunal. In case such an appeal is filed, the Tribunal shall examine the same on merits and dispose of the same as expeditiously as possible, preferably within two months from the date of filing of the appeal. The learned counsel for the appellant states that he shall be filing the appeal within one week.

15. The substantial question of law that has arisen in this case stands answered

by holding that the Tribunal was not correct in law in remanding the matter to the Commissioner of Customs (Appeals) after having held that the Commissioner of Customs (Appeals) had no jurisdiction to hear the appeal. The appeal stands allowed, as above.