
(2023) 05 CESTAT CK 0025

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Custom Appeal No. 11277 Of 2016

M K Wood India Pvt Ltd

APPELLANT

Vs

C.C.-Mundra

RESPONDENT

Date of Decision : 11-05-2023

Acts Referred:

Citation : (2023) 05 CESTAT CK 0025

Hon'ble Judges : Raju, Member (T); Somesh Arora, Member (J)

Bench : Division Bench

Advocate : K J Kinariwala, Himanshu P Shrimali

Judgement

Raju, Member (T)

1. The present appeal has been filed by M K Wood India Pvt Ltd against dismissal of their appeal filed before the Commissioner of appeals.
2. Learned Counsel pointed out that they had failed to claim benefit of Notification No. 21/2012-Cus dated 17.03.2012 at the time of filing the Bill of Entry under the self-assessment procedure. On realizing their mistake, they file the appeal before the Commissioner (Appeals) seeking the challenge the self-assessment made by them. He pointed out that the Commissioner (Appeals) has rejected their appeals solely on the ground that the self assessment is not a appealable order and therefore, no appeal can be filed against such order. He pointed out that the observation of Commissioner (Appeals) is contrary to the observations of Hon'ble Apex Court in the case of ITC LTD Vs. CCE, Kolkata-IV-2019 (368) ELT 216 (S.C) wherein it is specifically held that of self assessment orders are also assessment orders and are appealable just like other orders, like re-assessment orders.
3. Learned AR relied on the impugned order.
4. We have considered the rival submissions. We find that the Commissioner (Appeals) has rejected the appeal solely on the ground that no appeal can be

filed against the self assessment order. We find that the Commissioner orders did not have the benefit of the decision of the Hon'ble Apex Court in the case of ITC LTD (supra).

"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 :

"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 :

[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.]

[(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."

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)."

5. In view of the above, we set aside the impugned order and remand the case back to the Commissioner (Appeals) for re-consideration.