CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20370 of 2024

(Arising out of Order-in-Appeal No.284/2023 dated 13.12.2023 passed by the Commissioner of Customs (Appeals), Bangalore.)

M/s. Merck Life Science Pvt. Ltd.
No.50A, 2nd Phase, Ring Road,
Peenya,
Bangalore – 560 058. — Appellant(s)

VERSUS

The Chief Commissioner of Customs
Bangalore Customs Zone,
Central Revenue Building,
No.1, Queens Road,
Bengaluru – 560 001. — Respondent(s)

APPEARANCE:

Shri R. Sundaranathan, Advocate for the Appellant.

Shri Vinod Kumar Garhwal, Superintendent (AR) for the Respondent.

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO. 20605 /2026

DATE OF HEARING: 27.03.2026

DATE OF DECISION: 06.05.2026

PER: R. BHAGYA DEVI

This appeal is filed by the appellant M/s. Merck Life Sciences Pvt. Ltd. against Order-in-Appeal No. 284/2023 dated 13.12.2023 passed by the Commissioner of Customs (Appeals), Bengaluru.

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2. Briefly the facts are that the appellant had filed a Bill of Entry No.2334134 dated 08.03.2019 towards import of certain goods along with the relevant documents such as invoices, packing list etc. and the same was self-assessed under RMS. Thereafter, the goods were cleared on payment of custom duty of Rs.54,15,162/- and out-of-charge was provided to the appellant. Subsequently, they found that there was short shipment of imported goods and accordingly, filed a refund claim due to short shipment under the provision of Section 27 of the Customs Act, 1962. The customs issued deficiency letter dated 22.03.2022 requesting the appellant to provide necessary documents to process the refund claim. The appellant, thereafter, sort for reassessment/amendment which was rejected by the authorities concerned vide order dated 17.06.2022. Aggrieved by this order, the appellant filed an appeal before the Commissioner (Appeals), who in the impugned order referring to Section 17(4) and 17(5) of the Customs Act, 1962 and the Board Circular No. 55/2020-Cus. dated 17.12.2020 held that there was no provision for reassessment in the present set of facts; accordingly, rejected the request of the appellant for reassessment. Aggrieved by this order, the appellant is in appeal before us.

3. The Learned Counsel submitted that on receipt of import goods, they got to know that the goods were short-shipped by the supplier and immediately, sort for reassessment. It is submitted that a letter dated 12.05.2021 was issued for reassessment providing all the relevant documents which were available at the time of clearance of goods; however, both authorities rejected their request for reassessment. It is the submission of the learned counsel that necessary powers are available to the authorities concerned under Section 17 and

Section 149 of the Customs Act, 1962 for reassessing the Bill of Entry which they failed to do. Relied on the following decisions:

- **Sony India Pvt. Ltd. Vs. Union of India and Others: Order dated 21.08.2021** passed by the Hon'ble Telangana High Court in Writ Petition No. 4793/2021

- **SECO Tools India Pvt. Ltd. vs. Commissioner of Customs, Export Mumbai:** Final Order No. A/85916/2022 dated 29.09.2022

- **ITC Ltd. vs. Commissioner of Central Excise Kolkata-IV: 2019 (368) E.L.T. 216 (S.C.)**

- **Principal Commissioner of Customs, New Delhi Vs. M/s. Lava International Ltd.:** Final Order No.50112-50117/2023 dated 10.02.2023

3.1 He further submitted that as an incorporated entity, omission of employees or his CHA to take timely action not to be burdened on the *bona fide* and deserving importer, as reassessment including by way of amendment or Bill of Entry is to be made on the basis of documents available at the time of clearance of import goods. Referring to the decision in the case of **Shah Nanji Nagsi Exports Pvt. Ltd. vs. Union of India: 2025 (394) E.L.T. 341 (S.C.)** wherein it was held that the importer should not be punished and deprived of legitimate reliefs for the omission of his customs broker. Hence, it is requested that, in the interest of justice, the matter should be remanded for reassessment/amendment of the Bill of Entry.

4. The Authorised Representative (AR) on behalf of the Revenue reiterated the findings of the Commissioner (Appeals) in the impugned order and submitted that the Commissioner (A) had discussed and given a detailed finding describing the relevant provisions of the Customs Act, 1962 and rightly rejected the reassessment/amendment of the Bill of Entry after the goods were assessed and cleared on payment of duty and where out-of-charge was given. Moreover, refund claim cannot be filed directly without challenging the assessment as is held by the Supreme Court in the case of **ITC Ltd. Vs. Commissioner of**

Central Excise Kolkata-IV (supra). Therefore, it is his submission that the plea of the appellant needs to be rejected and the impugned order has to be sustained.

5. Heard both sides. The undisputed facts are the appellant had filed the Bill of Entry No. 2334134 dated 08.03.2019 wherein the description of the goods were mentioned as 'Assy Electromechanical 30 numbers and the goods were assessed to duty at Rs.54,15,162/- as noted by the Commissioner (Appeal) in the impugned order. The invoice No.371708 dated 08.07.2018 placed on record by the appellant mentioned the quantity as 30 quantity and the packing list also mentioned quantity shipped as 30, based on which, goods were self-assessed by the appellant and assessed customs duty was discharged. Thereafter, the appellant filed a refund claim and requested for reassessment which was rejected by the original authority vide order dated 17.06.2022 on the ground that the Bill of Entry was not challenged. On appeal to the Commissioner (Appeals), the order of the original authority was upheld on two grounds. The Commissioner (Appeals) observed that the impugned Bill of Entry was assessed and out-of-charge was given on 08.03.2019 and if the appellant was aggrieved against the assessment, they should have filed an appeal on or before 07.06.2019; while the present appeal if filed on 06.09.2022; hence, it is beyond the condonable period.

6. Secondly, referring to Section 17(5) of the Customs Act, 1962 whether the Assistant Commissioner of Customs has the power to reassess the Bill of Entry under Section 17(5) after the goods have been cleared for home consumption was also considered and rejected on the ground that the self-assessment could be altered only through appeal proceedings and not through reassessment under Section 17(5) and also referring to

the decision of the Supreme Court in the case of **ITC Ltd. Vs. Commissioner of Central Excise Kolkata-IV** (supra) there being no challenge to the assessment, the provisions of Section 17(5) cannot be invoked. For better understanding, the provisions of Section 17(5) of the Finance Act, 1962 is reproduced below:

> **Section 17. Assessment of duty.** -
>
> (1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.
>
> (2) The proper officer may verify the [2] [the entries made under section 46 or section 50 and the self assessment of goods referred to in sub-section (1)] and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.
>
> [3] [Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.]
>
> [4] [(3) For [5] [the purposes of verification] under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.]
>
> (4) Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.
>
> (5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter [6] [***] and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper

> officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

As seen from the above provision, we find that the Proper Officer can take up reassessment on his own only if it is later found based on testing or any other verifications undertaken by the Department that the assessment was not correct and reassessment needs to be done and in that case, the reassessment is done after giving an opportunity of hearing to the appellant by following the principles of natural justice. Admittedly, in this case, the appellant had self-assessed and cleared the goods on 08.03.2019 and only in the year 2021 claims short shipment, which cannot be acceded to, since all the documents such as invoices packing list placed on record at the time of assessment showed the quantity as 30. Therefore, if it all there is short-shipment, the appellant ought to have challenged the assessment within the appealable period on production of proof of short-shipment, which he has failed to do so, therefore the question of reassessment under Section 17(5) does not arise.

7. The Supreme Court in the case of **ITC Ltd. Versus Commissioner of Central Excise, Kolkata-IV** (supra) observed as:

> "38. No doubt about it that the expression which was earlier used in Section 27(1)(i) that "in pursuance of an order of assessment" has been deleted from the amended provision of Section 27 due to introduction of provision as to self-assessment. However, as self-assessment is nonetheless an order of assessment, no difference is made by deletion of aforesaid expression as no separate reasoned assessment order is required to be passed in the case of self-assessment as observed by this Court in *Escorts Ltd.* v. *Union of India & Ors.* (supra).

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41. It is apparent from provisions of refund that it is more or less in the nature of execution proceedings. It is not open to the authority which processes the refund to make a fresh assessment on merits and to correct assessment on the basis of mistake or otherwise.

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

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> 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)."

8. The case-laws relied upon by the appellant are not relevant since the facts of the case in the case of *M/s. Sony India Pvt. Ltd.* are entirely different from the present issue and the other two cases relied upon by the appellant are with regard to amendment of shipping bills, which is of no relevance to the present set of facts. The present case is purely based on whether the goods are short-shipped or not when actually all the documents at the time of assessment were clearly showing the quantity as 30 numbers, based on which assessment has taken place. After two years, appellant cannot claim that the goods have been short-shipped, which was purely based on facts. Therefore, as discussed above the question of reassessment under Section 17(5) or claiming of refund without challenging the assessment does not arise, hence the same is rejected.

9. In view of the above discussions, we find that the Commissioner (Appeals) was right in rejecting the reassessment since the appellant had not challenged the originally self-assessed Bill of Entry and even if the present challenge is to be

considered as an appeal before the Commissioner (Appeals), he was right in stating that it was beyond the condonable period as provided in the Act. Therefore, we are in agreement with the Commissioner (Appeals) that the appellant cannot through a refund claim reopen the assessment nor can reassessment be entertained beyond the appealable period. We find no merit in the appeal filed by the appellant, hence, the same is rejected.

Appeal is rejected.

(Order pronounced in Open Court on 06.05.2026.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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