IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. C/70391/2018-CU[DB] With
STAY Application No. C/Stay/70171/2018

(Arising out of Order-in-Appeal No. NOI-CUSTM-000-APP-1669 to 1675-17-18 dated 16/01/2018 passed by Commissioner of Customs & Central Tax (Appeals), Noida)

Commissioner of Customs, Noida **Appellant**

Vs.

M/s VSM Impex Pvt. Ltd. **Respondent**

Appearance:

Shri Gyanendra Kumar Tripathi, Assistant Commissioner (AR)
for Appellant
Absent, for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 26/06/2018

FINAL ORDER NO. **71261/2018**

Per: Archana Wadhwa

After rejecting request for staying the operation of the impugned Order-in-Appeal, in as much as the same is a non-executable order, we proceed to decide the appeal itself as a short issue, covered by the precedent decision of the Tribunal is involved.

2. As per the facts on record the respondent filed 9 Bill of Entries for clearance of Mini Booster Pump at the declared value. Revenue by entertaining a view that the goods have been under-valued, initiated proceedings against the

respondent culminating into an Order-in-Original dated 16/11/2017 passed by the Original Adjudicating Authority enhancing the value of the goods imported. As against the said Order-in-Original, it is seen that 9 appeals were filed by the importers. Two such appeals were allowed by the Office of Commissioner (Appeals), vide Order-in-Appeal No. NOI-CUSTM-000-APP-1722 to 1726-16-17 dated 28/02/2017, allowing the appeals. Being aggrieved by those orders, Revenue preferred appeals before Tribunal, which was rejected by Hon'ble CESTAT vide Final Order No. C/A/71301/2017-CU[DB] dated 29/08/2017.

3. When the appellants' 7 appeals came before Commissioner (Appeals), he allowed the same while the present impugned order on merits as also by taking note of the fact that the same Order-in-Original already stands set aside and matter stands decided by the Tribunal, he rejected the present 7 appeals. Hence the present appeal by Revenue.

4. The above factual position, as detailed by Commissioner (Appeals) in his impugned order has not been rebutted by the Revenue, in which case the present appeal is also required to be rejected in the light of the earlier order of the Tribunal. Admittedly the same Order-in-Original already stands set aside by Commissioner (Appeals) and such setting aside stands confirmed by Tribunal, we find no justifiable reasons to interfere in the present impugned order of Commissioner (Appeals) and to allow the Revenue's appeal.

5. In view of the above, appeal filed by the Revenue is rejected. Stay Petition also stands disposed of.

(Dictated in Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Ansari