CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 2431 of 2012

(Arising out of Order-in-Appeal No.15/2012-Customs dated 31.5.2012 passed by the Commissioner of Customs (Appeals), Cochin.)

Commissioner of Central Excise and Customs,
Calicut Commissionerate
C.R. Building, Manachira
Calicut.

Appellant(s)

Versus

M/s. EMKO Marketing
Room No.495/IJ,
1st Floor, UA Tower,
Wadakkanchery PO
Thrissur District

Respondent(s)

Appearance:

Mr. K. Vishwanath, AR — For the Appellant

None — For the Respondent

CORAM:

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

Final Order No. 21204 /2023

Date of Hearing: 01.11.2023
Date of Decision: 01.11.2023

Per : DR. D.M. MISRA

None present for the respondent.

2. The present appeal has been filed by the Revenue against the Order-in-Appeal No. 15/2012-Customs dated 31.05.2012

passed by the Commissioner of Central Excise, Customs and Service Tax (Appeals), Cochin.

3. Briefly stated facts of the case are that the respondent had imported betel nuts against Bill of Entry No. 002 dt. 18.04.2012 by declaring its value as Rs. 36.82 per kg. rejecting the declared value, the Revenue enhanced it to Rs. 79.87 per kg on the basis of the examination of the officers of Customs. Aggrieved by the said order, the respondent filed an appeal before the learned Commissioner (Appeals), who set aside the said order and remanded it to the adjudicating authority. Hence, the Revenue is in appeal against the said remand order.

4. Reiterating the grounds of the appeal, the learned Authorised Representative for the Revenue submits that even though the respondent has not requested for provisional assessment, the learned Commissioner (Appeals) while remanding the matter to the adjudicating authority allowed the assessment to be considered as provisional assessment, therefore, the order of the learned Commissioner (Appeals) is devoid of merit, hence, be set aside.

5. On going through the order of learned Commissioner (Appeals), we find that while recording the observation that the respondent disputed the method of enhancement of value of betel nuts only by virtual inspection and request for sample test by Agmark Laboratory which was denied to them; the learned Commissioner (Appeals) observed that such an action by the

department is contrary in the principle of law and remanded the matter to the adjudicating authority by observing as follows:

> *"13. It is also seen that the assessee had, in original proceedings, sought for provisional assessment under Section 18 of the Customs Act, 1962. Under Rule 18, importer can make a request for provisional assessment and this request should, therefore, have been considered by the original authority.*
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> *14. For the above reasons, the assessment is set aside and the proper officer of customs is directed to draw a sample and have it tested in Agmark or any other reliable laboratory for testing the grade of the betel nuts before assessing the duty by adoption of value of clearances of contemporaneous imports matching the grade of imported goods. In the meanwhile, the original authority may allow provisional assessment in accordance with Section 18 of the Customs Act, 1962, if the appellant so requests."*

6. In view of the above reasoning of the learned Commissioner (Appeals), we do not find any discrepancy and also no error in remanding the matter to the adjudicating authority. Consequently, the impugned order is upheld and the Revenue's appeal being devoid of merit is dismissed.

(Order dictated and pronounced in Open Court.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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