IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

C/00312/2006

[Arising out of Order-in-Appeal No.C.CUS.377/06, dated 26.05.2006 passed by the Commissioner of Customs (Appeals), Chennai]

M/s. A.L. SUDARSHAN CONSTRUCTION CO. LTD. APPELLANT

Versus

COMMISSIONER OF CUSTOMS (PORT- IMPORT) CHENNAI RESPONDENT

Appearance:

For the Appellant Shri A.K. Jayaraj, Adv.
For the Respondent Shri S. Nagalingam, AC (AR)

CORAM:

Hon'ble Shri D.N. Panda, Judicial Member
Hon'be Shri Madhu Mohan Damodhar, Technical Member

Date of hearing/decision **23-01-2017**

FINAL ORDER NO. 40521/2017

Per D.N. Panda:

Appellant submitted that the bill of entry in respect of import was filed declaring the goods as "New Telsmith Model 445 Gyras Phere Crusher Complete". That was assessed and exemption was granted to the Crusher machine in terms of Notification No.21/2002-Cus. It was well within the knowledge of the Customs that the Crusher with parts came to India. The goods imported were not separated from each other for assessment and the value declared remained the same for the entire lot of import comprising complete crusher and parts thereof. When the audit made certain objections on 15.03.2002, demand notice was issued on 19.09.2002 disturbing the declared value and parts were alleged to be separate goods to be taxed separately.

Customs, Excise & Service Tax Appellate Tribunal

2. Revenue says that parts are different from Complete Crusher. Because the parts were not subject to levy of duty, a show-cause notice was issued to bring that into the taxation.

3. Heard both sides and perused the records.

4. When attention to demand notice at page no.48 of the appeal folder was invited, on examination, it is found that the same does not reveal whether the appellant was granted any scope for defence against allegation above. It is well settled law that the show-cause notice should conspicuously show the reason of demand proposed to grant an opportunity to the noticee for raising defence, if any. Such course of natural Justice not being followed being guided by the ratio laid down in the apex court judgment in the cases of (i) *Commissioner of Central Excise, Bangalore Vs. Brindavan Beverages (P) Ltd.* reported in *2007 (213) E.L.T. 487 (S.C.),* (ii) *Commissioner of Central Excise, Nagpur Vs. Ballarpur Industries Ltd.* reported in *2007 (215) E.L.T. 489 (S.C.),* (iii) *Commissioner of Central Excise Vs. Gas Authority of India Ltd.* reported in *2008 (232) E.L.T. 7 (S.C.)* and (iv) *Precision Rubber Industries (P) Ltd Vs. Commissioner of Central Excise Mumbai* reported in *2016 (334) E.L.T. 577 (S.C.)* the adjudication is bound to be set aside. It is ordered accordingly.

(Dictated and pronounced in open court)

22/03/2017 22/3/2017

(MADHU MOHAN DAMODHAR)
TECHNICAL MEMBER

(D.N. PANDA)
JUDICIAL MEMBER

ksr

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति/Certified True Copy
30/3
सहायक पंजीकार/Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/(CESTAT)
चेन्नै/Chennai