IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Appeal No. C/52621/2016-CU [DB]

[Arising out of Orders in Appeal No. CC(A)CUS/D-I/I&G/570-571/2016 dated 22.06.2016, passed by the Commissioner (Appeals), Customs, New Delhi]

For approval and signature:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

Commissioner of Customs, New Delhi .... Appellant

Vs.

Mount International .... Respondent

Appearance:

Shri K.Poddar, DR for the Appellants
Shri Ms. Surabhi Sinha, Advocate for the Respondent

CORAM:
Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

Date of Hearing: 29.12.2016

FINAL ORDER NO. 56367/2016-CU [DB]

Per Justice (Dr.) Satish Chandra

The present appeal is filed against Order in Appeal No. CC/570 & 571/2016 dated 22.06.2016.

2. Brief facts of the case are that the respondent / assessee during the period June- July 2013 imported Dendrobium Hybrid Fresh Orchid Cut Flowers from Thailand. The assessee has shown the value by way of Kacha Bill which was not accepted

by the Department who proceeded to enhance the same from US$0.03 to US$0.07 per piece. The duty difference was also paid by the assessee. Subsequently, the importer challenged the Bill of Entry. The Commissioner (Appeals) passed the order dated 25.03.2013, where direction was given to the lower authorities to pass the speaking order within a period of 15 days. But the lower authorities have passed the speaking order after the limit of 15 days. Meanwhile the respondent / assessee filed the refund claim for the differential duty paid.

3. When the refund claim was filed, the lower authority has passed the Order in Original No. 182/2015 dated 21.08.2015 where the demand of differential duty was justified and the value enhancement was upheld.

4. When the assessee had the order in appeal in hand, the Department rejected the refund claim of the respondent.

5. Being aggrieved, the appellant has filed appeal before the Commissioner (Appeal) who, vide its impugned orders dated 22.06.2016, has set aside the order in original for the reason that the same was not passed within a period of 15 days as per the earlier direction. Not being satisfied, the Department has knocked the door of this Tribunal.

6. With this background, we have heard, Shri K. Poddar, for the Department and Ms. Surbhai Sinha Ld. Advocate for the respondent / assessee.

7. During the course of arguments the Ld. Counsel for the respondent assessee submits that no proper opportunity was given by the lower authorities. The enhancement of value was done without forwarding the details of bills of entry on the basis of which it was proposed. He also submits that the lower authorities have violated the principles of natural justice.

8. After hearing the above submission and considering the facts, it appears that Commissioner (Appeals), vide his order No. 60-181/2013 dated 25.03.2013 has directed to complete the assessment and pass speaking order within a period of 15 days but the same was not complied. It was completed belatedly. On technical ground the justice cannot be denied to the parties. In the instant case order in original was passed belatedly. But the same cannot be set aside merely for this reason only.

9. We find that the evidence in the instant case was not examined on merits by the Commissioner (Appeals). He again extended relief but merely on technical ground.

10. In the peculiar facts and circumstances of the case, the delay, if any, on the part of the original authority can be

condoned for the reason that it will not come on the way to the substantial justice.

11. In the light of above discussion and by considering the facts and circumstances of the case, we set aside the impugned order and remand the matter back to the Commissioner (Appeals) to decide the issue strictly on merit but by providing reasonable opportunity to the assessee. Additional, evidence may be admitted, if need be, as per law.

12. In the result, appeal filed by the Department is allowed by way of remand.

[Pronounced in the open Court]

(B. Ravichandran)
Member (Technical)

(Justice Dr. Satish Chandra)
President

KL