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

Custom Appeal No. C/58908/2013-Cu[DB]
[Arising out of Order-In-Appeal No. 177-179/SVS/GGN/2013 dated 21.03.2013 passed by Commissioner of Central Excise (Appeals), Delhi-III, Gurgaon (Haryana)]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. Ashok K. Arya, Member (Technical)

C.C.E, Delhi-iii ...Appellant

Vs.

M/s. Veekay And Company …Respondent

Appearance:
Mr.Govind Dixit, DR for the Appellant
None for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Date of Hearing.27.10.2016
Date of Decision 20.02.2017

Final Order No. 51886 /2017

Per S.K. Mohanty:

Revenue has filed this appeal against the impugned order dated 21.03.2013 passed by the Commissioner of Central Excise (Appeals), Gurgaon. Grievance of Revenue is that since the appellant did not apply for extension of warehousing period in terms of Section 61 of the Customs Act, 1962, duty demand can be conformed under Section 28 *ibid* and goods can be confiscated under Section 111(j) and Section 111(o) *ibid*.

2. Heard both sides and perused the records.

3. We find that the Ld. Commissioner (Apples) vide impugned order has held that provision of Section 111(j) are not attracted when the goods are still in the customs bonded warehouse. Further, with regard to invocation of the provisions of Section 111(o) *ibid,* the Ld. Commissioner (Appeals) has held that the Original Authority has not specifically mentioned in the adjudication order as to which conditions provided therein has been violated by the appellant.

4. On perusal of the impugned order, we find that the ld. Commissioner (Appeals) has taken the correct legal stand that the goods cannot be confiscated under the fact and circumstances of the case and penalty cannot be imposed under Section 112(a) *ibid*.

5. However, we find that though the ld. Commissioner (Appeals) has set aside the adjudication order and allowed the appeal in favor of the appellant (respondent herein), but has not recorded any findings with regard to the Customs Duty demand and interest thereon confirmed by the Original Authority in the adjudication order. Thus, we are of the view

that the matter should go back to the commissioner (Appeals) for addressing such issue.

6. Therefore, after setting aside the impugned order, we remand the matter to the ld. Commissioner (Appeals) for deciding the issue as to whether duty demand can be confirmed against the appellant under the facts and in the circumstance of the case.

7. The appeal is disposed of accordingly.

(Pronounced in the open court on __20.02.2017__)

(Ashok K. Arya)
Member(Technical)

(S. K. Mohanty)
Member (Judicial)

Sakshi