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

Appeal No. C/60166/2013-CU(DB)

[Arising out of Order-in-Appeal No. CC(A)CUS/492/2013 dated 30.07.2013, by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Haryana].

M/s. Pranav Vikas (I) Ltd. **....Applicants**

Vs.

C.C.E. New Delhi-II **....Respondent**

Appearance:
Shri Prabhat Kumar, Advocate for the Appellant
Shri K. Poddar, DR for the Respondent

<u>**CORAM**</u>:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Date of Hearing: 27.02.2017

FINAL ORDER NO. <u>52112/2017</u>-CU(DB)

<u>**Per B. Ravichandran:**</u>

The appeal is against the order dated 30.07.2013 of Commissioner (A), IGI Airport, New Delhi. The appellant imported goods described as "aluminum Extruded Hollow Profiles" and classified the same for Customs Duty under CTH 76042100. The Revenue entertained a view that the said product is correctly classifiable under CTH 84199090 attracting higher Basic Customs Duty. It was considered as having essential characters of parts of condenser unit. Classification was decided by original authority holding that same should be under CTH 84199090. The original authority also ordered confiscation of the imported goods, with option to redeem the same on payment of fine of Rs.4,60,000/-, with a penalty of Rs.40,000/-. On appeal, vide impugned order the

Commissioner (A) upheld the classification under CTH 84199090. However, he reduced the fine and penalty to Rs.40,000/- and Rs.10,000/- respectively.

2. The Ld. Counsel for the appellant submitted that they have been regularly importing said items and it is basically aluminum hollow tube of generic nature and in their factory they have been working on the same item to make parts of condenser. He submitted that the importer agreed for the classification under Chapter 84, to expedite the clearances. Now they are contesting the same on the ground that product is of generic nature and should fall under Chapter 76 as aluminum hollow tube and not as the component of machinery under chapter 84. He also relied on certain decided case laws.

3. The Ld. AR submitted that the original authority has categorically observed that the product imported is having essential character of part of condenser and its micro multi port tube of aluminum alloy having essential character of part of a condenser.

4. We have heard both the sides and perused the appeal records.

5. We note that the impugned order recorded that in the absence of sample of the product, the Commissioner (A) could not make a categorical finding on the classification. However, he relied upon the reasoning given by the original authority to uphold the view of the Revenue. We note that imported items was to have been examined to form the specific opinion as to whether the

product is of generic nature or has got essential character of a part of condenser. Ideally, physical examination along with literature and details of further processes carried out on the said product by the manufacturer will help arrive at the correct decision. We are handicapped by the absence of sample, material specific details as well as further processes carried out by the appellant as corroborated by verification by Revenue.

6. The Ld. Counsel states that they are regular importers of the same item and they can also submit the details of processes undertaken by them on the imported items in their unit. It is his plea that if such processes are carried out, then only, the product assumes characteristics of a part of the condenser.

7. Considering the above facts we find it fit and proper to remand the case back to the original authority to specifically examine the samples, if they are of the same nature as involved in the impugned proceedings, other materials submitted by appellant and decide the case afresh. The appellant shall be given an opportunity to present their side of the case. With these observations, impugned order is set aside and matter is remanded back to the original authority.

8. Appeal is disposed of in the above manner.

[Dictated and pronounced in the open Court]

(B. Ravichandan)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

Bhanu