IN THE CUSPTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:22.09.2017

Customs Appeal No.113/2011-CU(DB)

[Arising out of Order-in-Appeal No.CCA/I&G/319/2010 dated 20.12.2010 passed by the Commissioner of Customs (I&G), New Customs House,New Delhi]

CC (I&G) Appellants

Vs.

M/s.Quantum HI-Tech Merchandising Pvt.Ltd. Respondent

Appearance:

Rep. by Shri R.K. Manjhi, DR for the appellant.
Rep. by none for the respondent.

Coram: Hon'ble Shri S. K. Mohanty, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No.58145/2017

Per S.K. Mohanty:

This appeal is directed against the impugned order dated 20.12.2010 passed by the Commissioner of Customs (I&G), New Delhi.

2. The brief facts of the case are that the respondent had filed the Bills of Entry dated 12.04.2010 for clearance of Web Camera and claimed classification under CTH 84733030, which attracts nil rate of customs duty. However, while assessing the Bills of Entry, the Assessing Authority has classified the impugned goods under CTH 85258090, attracting Basic Customs Duty @10% Adv. On appeal against the assessment order, the Commissioner (Appeals) vide the impugned order has held that the Assessing Group ought to have issued a speaking order as per the provisions of Section 17(5) of Customs Act, 1962 for the reason of

change in the classification of goods. Since, no such order has been passed by the assessing authority, the ld. Commissioner (Appeals) has ordered for consequential relief to the respondent in respect of duty paid by it under protest. Further, he has also held that the classification of subject goods has already been settled by this Tribunal in the case of **Hi-Tech Computers – 2005 (180) ELT 356 (Tribunal-Bangalore)**.

3. Ld. AR appearing for the Revenue reiterates the grounds of appeal urged by the Revenue in this appeal. He further submits that Web Camera, being a digital camera, is rightly classifiable under CTH 8525.

4. Heard both sides and perused the case records.

5. It is an admitted fact on record that while assessing the subject Bill of Entry, the Department had changed the classification of Web Camera, as claimed by the respondent. Thus, in such an eventuality, a speaking order was required to be passed by the proper officer in terms of Section 17(5) of the Customs Act, 1962, which has not been passed in this case. Further, we also note that the ld. Commissioner (Appeals) has extended the consequential relief to the respondent on the sole ground that no speaking order was passed by the proper officer. Since, the classification issue has not been settled in this case and is also the subject matter of dispute in the present appeal, we are of the view that the classification issue has to be addressed by the proper office, by passing the speaking order in terms of Section 17(5) of the Act.

6. Therefore, after setting aside the impugned order, we remand the matter back to the proper assessing officer for passing a reasoned and speaking order in

context with the change in the classification of the disputed goods. Further, the assessing officer should also record the applicability of the decision of the Tribunal in the case of **Hi-Tech Computer (Supra)** to the facts of the present case.

6. In the result, the appeal is allowed by way of remand.

[order dictated & pronounced in open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.