IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

DATE OF HEARING : 13/06/2018.
DATE OF DECISION : 13/06/2018.

Customs Appeal No. 51253 of 2018 with COD Application No. 50472 of 2018

[Arising out of the Order-in-Appeal No. CC (A) CUS/D-II/ICD/TKD/1486/2017 dated 05/12/2017 passed by The Commissioner of Customs (Appeals), New Custom House, New Delhi.]

M/s ARC Worldwide Limited Appellant

Versus

CC (ICD, TKD) (Import), New Delhi Respondent

Appearance

S/Shri R.S. Yadav and Abhishek Jaju, Advocates – for the appellant.

Shri Rakesh Kumar, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri Anil Choudhary, Member (Judicial)**
Hon'ble Shri C.L. Mahar, Member (Technical)

Final Order No. 52730/2018 Dated : 13/06/2018

Per. Anil Choudhary :-

The appellant has filed the present appeal alongwith condonation of delay application.

2. The appellant had filed bill of entry No. 7815575 dated 14/12/2016 for clearance of 6080 pieces of DC Motors – 900W of Chinese origin. The bill of entry was processed by the custom house and appellant was required to file hard copy of bill of entry which was filed on 6th March 2017. Thereafter in view of contemporaneous import information, it was proposed to enhance the value of the goods to Rs. 2225/- per piece, informing the appellant to reply to the custom, whether they are acceptable to the proposed enhancement of the value of the goods and whether they required personal hearing and/or speaking order in this regard. In reply thereto the appellant by their letter dated 30th March 2017 received by the concerned Deputy Commissioner/Customs House on 3rd April 2017, they prayed that the bill of entry be assessed by a speaking order as they are not agreeable to the enhancement as proposed by the custom. Thereafter as per the downloaded copy of the processed copy/ICD copy of the Department, it appears that bill of entry has been treated assessed on 5th April 2017. It is further noted by the customs that the importer did not accept the suggested value and have requested for passing of a speaking order. Thereafter it appears that no speaking order was passed and the appellant treating the processing by the custom as complete as on 5th April 2017, by filing appeal before the Commissioner (Appeals), which has been dismissed on the ground of limitation, that the appellant have filed the appeal with a delay of 4 days, beyond the period of 60 days.

3. Having considered the rival contention, we find that the concerned Custom House/Deputy Commissioner of Customs have failed to pass a speaking order, as required under the law prescribed under Section 17 of the Customs Act. Hence, practically there was no appealable order before the Commissioner (Appeals). In this view of the matter, we hold the impugned order of Commissioner (Appeals) as a nullity. We further allow the appeal by way of remand and remand the matter to the Deputy Commissioner, Custom House, with direction to pass a reasoned order, as required under Section 17 of the Customs Act, within a period of 45 days from the date of receipt of copy of this order. We also direct the appellant to appear before the concerned Customs Authority, and seek an opportunity of hearing.

4. The condonation of delay application also stand disposed of in the above terms.

(Order dictated and pronounced in open court.)

(C.L. Mahar)
Member (Technical)

(Anil Choudhary)
Member (Judicial)

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