IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EAST ZONAL BENCH AT KOLKATA

APPEAL NOS: C/102, 247 & 249/2008

[Arising out of Order-in- Appeal Nos: KOL/CUS/CKP/409-410/2007 dated 23rd November 2007, KOL/CUS/CKP/57-59/2008 dated 25th February 2008 and KOL/CUS/CKP/138-139/2008 dated 19th May 2008 of Commissioner of Customs (Appeals), Kolkata.]

Commissioner of Customs (Port)
Kolkata é ***Appellant***

versus

Simplex Electrical Engineering Pvt Ltd ***…Respondent***

Appearance:

Shri SN Mitra, Assistant Commissioner (AR) for appellant

None for respondent

CORAM:

Hon'ble Shri P K Choudhary, Member (Judicial)
Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing: 13/03/2018
Date of decision: 13/03/2018

ORDER NO: _FO/A/76774-76776/2018

Per: C J Mathew

Revenue has filed these appeals against orders-in-appeal no. KOL/CUS/CKP/409-410/2007 dated 23rd November 2007, no. KOL/CUS/CKP/57-59/2008 dated 25th February 2008 and no.

KOL/CUS/CKP/138-139/2008 dated 19th May 2008 of Commissioner of Customs (Appeals), Kolkata which, while disposing of challenge to the assessment of bills of entry no. 348397/18.06.07, 348050/15.06.07, 355469/25.07.07, 358015/08.08.07, 357184/ 03.08.07 and 376285/16.11.07 that had denied the benefit of concessional rate of duty available to "power driven pump sets" as per the notification no. 10/06-CE dated 1st March 2006, allowed the claim of importer-respondent, M/s Simplex Electrical Engineering Pvt Ltd, to the more favourable rate of additional duty of customs.

2. Learned Authorised Representative contends that the goods imported by the appellant were a combination of pump and diesel engine and, while the concession is available to the former, the machine for generation of power is not eligible. He draws attention to the reliance placed in the ground of appeal on the decision of the Hon'ble Supreme Court in *Collector of Customs, Bombay v. Perfect Machine Tools Co Pvt Ltd [1997 (96) ELT 214 (SC)]* on import of accessory to a machine along with the machine.

3. None appeared for the respondent.

4. On perusal of the impugned order, it is seen that the first appellate authority placed reliance on a decision cited by the importer without a proper examination of the manner in which the said decision would apply to the facts of the present dispute. It is also seen that, by

his own expression, a *prima facie* view appears to have been attributed as a final decision. This, according to us, does not appear to be a proper discharge of functions by an appellate authority. A detailed finding and a proper examination of the material facts as well as the fitment of the imported goods within the description in the exemption notification, is a prerequisite for overturning an assessment. More so, when the appeal has been filed against a bill of entry which does not demonstrate any disagreement between the importer and the assessing authority that would have been evident in, and by a, speaking order.

5. In the circumstances, we find it appropriate to set aside the impugned order and remand the matter back to the first appellate authority in the light of the decisions cited by the importer and now placed before us by the Learned Authorised Representative *supra*.

6. Appeals are accordingly allowed by way of remand.

(Pronounced in Court)

Sd/	***Sd/***
(P K Choudhary)	**(C J Mathew)**
Member (Judicial)	***Member (Technical)***

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